

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ADHAM AMIN HASSOUN,

Petitioner,

v.

Case No. 19-cv-6196

JEFFREY SEARLS, in his official capacity
Acting Assistant Field Office Director and
Administrator of the Buffalo Federal
Detention Facility.

Respondent.

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

1. Petitioner Adham Amin Hassoun (A#074-079-096) is currently being held in unlawful, indefinite detention at the Buffalo Federal Detention Facility (“BFDF”) in the custody of the Department of Homeland Security (“DHS”) and, specifically, Jeffrey Searls, Acting Assistant Field Office Director of U.S. Immigration and Customs Enforcement (“ICE”) Buffalo Field Office.

2. This case concerns the government’s asserted power to hold Mr. Hassoun in detention indefinitely—potentially for the rest of his life—based on nothing more than a unilateral executive branch determination that his release could pose a national security “risk” or terrorism “threat.”

3. Mr. Hassoun lived peacefully in the United States for more than a decade before his arrest. He has completed his sentence for the crimes of which he was convicted.

4. He has three children, all of whom are U.S. citizens, as well as extended family who are also U.S. citizens living in Florida.

5. Mr. Hassoun is a stateless Palestinian man who has been ordered removed from this country. But no country, including Lebanon, the country of his birth, has agreed to accept him. He has been held in immigration custody awaiting removal since his criminal sentence ended, more than 17 months ago.

6. In a prior habeas proceeding, the U.S. District Court for the Western District of New York held that the government could not establish that he would be removed to another country within the reasonably foreseeable future. On that basis, the Court found that Mr. Hassoun's indefinite detention had become unlawful under the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), which interpreted the statute that authorizes detention following a final order of removal, 8 U.S.C. § 1231(a), as authorizing detention only insofar as removal is significantly likely in the reasonable future.

7. The Supreme Court held that 8 U.S.C. § 1231(a) does not authorize indefinite detention. *Zadvydas*, 533 U.S. at 682; *see also Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984 (W.D.N.Y. Jan. 2, 2019) (holding that because Mr. Hassoun's removal was not reasonably foreseeable, his detention was not authorized by the statute).

8. Yet the government in this case claims precisely that power. The government has invoked a regulation, 8 C.F.R. §241.14(d), that purports to authorize it to hold Mr. Hassoun indefinitely based on a unilateral determination by a government official that he could be dangerous. The regulation purports to allow the government to condemn Mr. Hassoun to spend the rest of his natural life in prison and to die in immigration custody—without criminal charge or trial, without the ability to meaningfully review the underlying evidence against him, and without the opportunity to confront his accusers.

9. This regulation is unlawful and unconstitutional. First, the regulation flatly contradicts the statute under which it was enacted, as authoritatively construed by the Supreme Court, and is therefore *ultra vires*. Second, it does not comport with the Substantive Due Process protection of the fundamental right not to be deprived of one's freedom. Third, it does not provide even the most minimal procedures required by Procedural Due Process. Fourth, the regulation is void-for-vagueness because it does not provide fair notice of what actions could consign a person to be locked away in detention for the rest of his life. Fifth, the regulation subjects Mr. Hassoun to punishment for the same crime twice, violating the Double Jeopardy Clause. Finally, the regulation violates the Fifth Amendment because it unlawfully discriminates on the basis of alienage.

10. Even if the regulation were valid, which it is not, Mr. Hassoun cannot be detained under its authority because the government's evidence against Mr. Hassoun is insufficient to fulfill the three elements required to justify continued detention under the regulation.

11. Mr. Hassoun is not a threat to national security. The judge who presided at Mr. Hassoun's 4-month-long trial found at sentencing that his crimes were not violent, involved no identifiable victims, and were never directed against the United States or anyone in this country. The judge issued a sentence well below the guidelines range precisely because the facts did "not support the government's argument that Mr. Hassoun is such a danger to the community that he needs to be imprisoned for the rest of his life."

12. Mr. Hassoun continues to pose no national security threat. The only allegations beyond his conviction that the government relies on are anonymous, uncorroborated accusations made by unnamed fellow BFDF detainees who have strong interests in providing false information to the authorities in exchange for favorable outcomes in their own cases. Mr. Hassoun unequivocally denies these anonymous allegations.

13. Moreover, the regulation requires Mr. Hassoun to be released from custody if there are any conditions of release that would reasonably avoid a supposed risk. Mr. Hassoun's prior conviction, as well as the government's new and false allegations, stem solely from communication with other individuals. Thus, even if Mr. Hassoun posed a risk to national security, which he does not, any risk could be mitigated by appropriate conditions of release, such as monitoring and travel restrictions.

14. Indeed, a co-defendant who was tried together with Mr. Hassoun, convicted of the same charges, and sentenced to a similar term is now at liberty after completing his sentence.

15. Mr. Hassoun's detention is unjustified. There is no reason why he should continue to be imprisoned rather than being released to the custody of his U.S. citizen sister under appropriate conditions of supervision.

Jurisdiction and Venue

16. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and the Suspension Clause of the United States Constitution, Art. I, sec. 9, cl. 2.

17. Mr. Hassoun's current detention constitutes a "severe restraint" on his individual liberty such that Petitioner is "in custody" of the Respondents in violation of the laws of the United States." *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484 (1973), venue lies in the United States District Court for the Western District of New York, the judicial district in which Petitioner is being detained. Mr. Hassoun is being detained at the Buffalo Federal Detention Facility, which is under the jurisdiction of the ICE Field Office of Buffalo, New York,

which encompasses the geographic area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

Statement of Facts

Mr. Hassoun's Background

19. Adham Amin Hassoun is a Palestinian man born to Palestinian parents in Beirut, Lebanon on April 20, 1962. His parents resettled in Lebanon after the 1948 Arab-Israeli War. Lebanon does not grant citizenship to Palestinian refugees born within its borders.

20. Moreover, Mr. Hassoun's father never registered his family with the United National Relief Works Agency. As a result, despite living in Lebanon for many years, Mr. Hassoun was never recognized by Lebanon as a refugee.

21. Growing up in Lebanon, Mr. Hassoun knew firsthand what happened to a country when internal politics turned violent. As a teenager, he and his friends converted an old car into an ambulance and transported the wounded to the hospital during an armed conflict.

22. During Lebanese Civil War, Mr. Hassoun and his father were both captured, his father by the Lebanese Army and Mr. Hassoun by Shiite fighters. When Mr. Hassoun was captured, he was held for four nights and tortured.

23. Mr. Hassoun arrived in the United States on September 10, 1989, as a nonimmigrant visitor. He adjusted his status to that of an F-1 nonimmigrant student on June 5, 1990, when he began his studies at Nova Southeastern University.

24. Following his studies and after receiving work authorization, Mr. Hassoun worked in the IT field as a computer programmer and systems analyst. During this time, his mother sponsored him for a green card. While waiting on his green card, Mr. Hassoun began a family and had three sons, all of whom are U.S. citizens.

25. On June 12, 2002, Mr. Hassoun was detained by immigration authorities and charged with overstaying his visa, despite the fact that the government had approved his mother's petition sponsoring him for permanent resident in 1990, and his application for a green card remained pending. The government detained Mr. Hassoun at the Krome Service Processing Center in Miami, Florida throughout his immigration proceedings.

26. Mr. Hassoun's arrest fits a pattern of widespread detention of Muslims on immigration charges for purposes of interrogation in the months after the September 11 attacks. As the Department of Justice's Office of Inspector General has documented, between September 2001 and August 2002, more than 1,200 citizens and immigrants were detained for questioning, and more than 750 immigrants were held long-term in immigration detention as part of a far-reaching and often indiscriminate FBI investigation.

27. Mr. Hassoun was ultimately ordered removed by an immigration judge, and the Board of Immigration Appeals subsequently rendered his removal order administratively final. Mr. Hassoun continued to be detained in post-final order detention until he was transferred to criminal custody in January 2004.

28. The most difficult part of Mr. Hassoun's incarceration has been his separation from his family, including his three children, who were young when he was first detained and are now adults. Despite his prolonged separation from his children—including leaving his youngest son when he was only two years old—Mr. Hassoun has managed to maintain an incredibly strong bond with each of them. He speaks with them almost daily on the phone.

29. He also has five siblings. His sister, Beth, is a U.S. citizen who has lived in Florida since 1982. His other sister lives in Sweden and his three brothers live in the United Arab Emirates.

30. If released, Mr. Hassoun would live with his sister, Beth, a United States citizen. She is ready to welcome him into her home, and has made arrangements to accommodate him. A federal probation officer reviewed the reentry plan for Mr. Hassoun after visiting Beth's house and found it to be adequate.

Mr. Hassoun's Criminal Conviction

31. The government appears to be relitigating Mr. Hassoun's criminal conviction in which United States District Court Judge Marcia Cooke explicitly held that his crimes did not justify a life sentence. By invoking immigration detention laws, the government is attempting to circumvent Judge Cooke's decision, even though these laws have been construed by the Supreme Court as not authorizing such indefinite and possibly lifelong detention.

32. Mr. Hassoun was indicted on 11 counts, but was brought to trial on only three counts. On August 16, 2007, a jury found Mr. Hassoun guilty of these three charges, which related to support he had provided in 1990s to people sited in various conflicts involving Muslims around Eastern Europe, the Middle East and Northern Africa.

33. The crimes of which Ms. Hassoun was convicted—material support for terrorism and related conspiracy charges—involved no acts of violence and involved no actions directed at, in, or against the United States. He was charged and tried based on his outspoken support in the 1990s of ethnic minorities defending themselves in conflicts abroad. Mr. Hassoun understood himself to be engaging in protected speech in support of Muslims around the world.

34. Judge Cooke, who presided over his 4-month-long trial, confirmed that his offenses involved no threat to the United States and no national security threat more broadly. *See Hassoun Sentencing Tr., United States v. Hassoun*, No. 04-cr-60001 (S.D. Fla.), attached as **Exhibit A**.

35. In particular, at sentencing, Judge Cooke concluded that “[n]o so-called act of terrorism occurred on United States soil. [Hassoun] did not seek to damage United States infrastructure, shipping interests, power plants or government buildings. There was never a plot to harm individuals inside the United States or to kill government or political officials. There was never a plot to overthrow the United States government.” *Id.* 5:19-25.

36. Judge Cooke also made clear that the conviction on charges of material support and “conspiracy to maim, kill or kidnap” included absolutely “no evidence that [Mr. Hassoun] personally maimed, killed or kidnapped anyone in the United States or elsewhere . . . [and] the government has pointed to no identifiable victims.” *Id.* 6:7-19. She confirmed that the conviction was based solely on Mr. Hassoun efforts to “provide support to people sited in various conflicts involving Muslims” abroad. *Id.*

37. Judge Cooke found that Mr. Hassoun posed no danger and that a life sentence could not be justified on the grounds that it was necessary to prevent a risk to the community.

38. Judge Cooke also noted that Mr. Hassoun had submitted many letters of support from members of his community and that “[h]is employer and co-employees describe him as smart, compassionate and a caring human being.” *Id.* 7:17-18; Hassoun Letters of Support, Attached as **Exhibit B**.

39. Even more important, Judge Cooke found that “the government intercepted most of Mr. Hassoun’s telephone, work, home, cell, and fax. The interceptions and investigation continued for many, many years. He was questioned and never charged with a crime. The government knew where Mr. Hassoun was, knew what he was doing and the government did nothing. *This fact does not support the government’s argument that Mr. Hassoun poses such a*

danger to the community that he needs to be imprisoned for the rest of his life.” Hassoun Sentencing Tr, Ex. A. 8:8-16 (emphasis added).

40. As Judge Cooke noted, Mr. Hassoun was under constant electronic supervision for nearly a decade in the 1990’s and early 2000’s and during that time he never harmed anybody and never took any actions against the United States. The “terrorism” crimes of which he was charged and convicted related solely to communications he had and financial support he provided. They were evidently not serious enough to prompt the government to take any action for years, nor were they serious enough to cause the sentencing judge to impose a strict sentence, despite the government’s arguments.

41. To the contrary, in light of the nature of his offenses, Judge Cooke rejected the government’s request for a life sentence and also rejected a guidelines range of 360 months to life. *Id.* 7:2-3, 14:21-22. Instead, she departed radically downward, issuing a 188-month sentence. *Id.* 16:22-17:1. The government did not appeal the sentence. The remaining eight counts alleged against Mr. Hassoun in the indictment were subsequently dismissed by the U.S. Attorney.

42. Mr. Hassoun served approximately 165 months of his 188-month sentence, receiving approximately 23 months of good time credit.

The Government’s Indefinite Detention of Mr. Hassoun.

43. The government now seeks to impose what amounts to a life sentence on the very same basis that the trial judge considered and rejected—i.e. that Mr. Hassoun’s release would pose a danger to the community. There is no more basis for that conclusion now than there was when Mr. Hassoun was sentenced nearly 17 years ago.

44. To the contrary, Mr. Hassoun has served his sentence and has demonstrated through his good behavior in prison and immigration custody that he is not a threat to anybody. The new allegations the government has put forth are baseless and unsupported by any reliable evidence.

45. Mr. Hassoun has been detained in immigration custody at BFDf since October 2017, under 8 U.S.C. § 1231(a)(6), awaiting deportation from the United States on a final order of removal issued by the Board of Immigration Appeals.

46. The government has been unable to find a country that will accept him.

47. The government could release Mr. Hassoun into a supportive community and into the custody of his U.S. citizen sister in Florida, under appropriate conditions of supervised release, but instead continues to deprive Mr. Hassoun of his liberty.

48. In May 2018, Mr. Hassoun filed a petition for habeas corpus challenging the lawfulness of his detention asserting that his continued, indefinite detention was no longer lawful under 8 U.S.C. § 1231(a)(6) because it violated the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), among other constitutional and statutory grounds. *See Hassoun v. Sessions*, 18-cv-00586-FRG (filed May 22, 2018).

49. On January 2, 2019, the Court issued a decision and order finding that “[Mr. Hassoun]’s continued detention is no longer authorized under § 1231(a)(6). The Court determined the government had failed to show “a significant likelihood of [Mr. Hassoun’s] removal in the reasonably foreseeable future.” *Hassoun v. Sessions*, 2019 WL 78984, at *6.

50. The Court held, therefore, that Mr. Hassoun’s detention had become unlawful under the standard established by the Supreme Court in *Zadvydas*. *Id.*

51. The Court, however, allowed some additional time for the government to pursue negotiations with an unspecified country that the government had approached about accepting Mr. Hassoun. *Id.* at *7.

52. The Court ordered the government to report on the status of those negotiations by January 28, 2019, and further ordered the government to release Mr. Hassoun by March 1, 2019.

53. The Court stated, in addition, that its order did not preclude the government from continuing to detain Mr. Hassoun “on any other permissible basis under applicable statutes or regulations.” *Id.*

54. On January 28, 2019, the government notified the Court that the unspecified country had refused to accept Mr. Hassoun.

55. The next day, the Court issued an additional order confirming its prior order directing that Mr. Hassoun be released by March 1, 2019, “except that the Court’s order ‘does not preclude Respondent Searls from continuing to detain [Mr. Hassoun] on any other permissible basis under applicable statutes and regulations.’”

56. On February 22, 2019, the Department of Homeland Security served on Mr. Hassoun a “Notice of Intent and Factual Basis to Continue Detention.” *See* Notice, attached as **Exhibit C**.

57. The notice informed Mr. Hassoun that the government was initiating a procedure through which it would determine whether to hold Mr. Hassoun pursuant to 8 C.F.R. §241.14(d).

58. 8 C.F.R. § 241.14(d) states the government “shall continue to detain” a non-citizen who meets three criteria:

- (1) the individual “has engaged or will likely engage in any other activity that endangers the national security”;

(2) the individual's release "presents a significant threat to the national security or a significant risk of terrorism"; and

(3) "[n]o conditions of release can reasonably be expected to avoid the threat to the national security or the risk of terrorism, as the case may be."

59. According to the regulation, the individual "shall be notified of the [DHS]'s intention to continue the alien in detention and of the alien's right to submit a written statement and additional information." 8 C.F.R. § 241.14(d).

60. The regulation denies the individual the opportunity to know the "factual basis for [his or her] continued detention" or "evidence against him or her" if the government determines it wishes to withhold some such information for "the protection of national security and classified information." 8 C.F.R. § 241.14(d)(2).

61. The individual is subject, in some circumstances, to an interview with an immigration officer. 8 C.F.R. § 241.14(d)(3). The regulation states that this interview will be allowed only "if possible." This interview is not conducted before the actual decisionmaker, but instead appears to be in the nature of a deposition or interrogation.

62. This information is considered, in the first instance by ICE, which makes a recommendation to the Secretary of Homeland Security. 8 C.F.R. § 241.14(d)(5).

63. The Secretary of Homeland Security ultimately makes the decision about whether to certify the individual for continued detention under 8 C.F.R. § 241.14(d). The Secretary's determination is based on the record developed by ICE and its recommendation, as well as the recommendation of the Federal Bureau of Investigation ("FBI").

64. The regulation does not allow the individual to see any evidence against him that the government does not wish to provide.

65. The regulation does not allow the individual any opportunity to question witnesses against him, or even to see witness statements upon which the government relies. Indeed, the regulation does not even require the government to identify the names of the witnesses or sources of evidence upon which it relies.

66. The regulation also provides no opportunity for the individual to engage with the FBI prior to its recommendation, nor does it set forth the basis upon which the FBI will make its recommendation.

67. The regulation provides no opportunity for a hearing before any decisionmaker, let alone a hearing before an impartial decisionmaker.

68. Instead, the regulation leaves it within the Secretary's sole discretion to make the ultimate determination regarding an individual's potential lifelong imprisonment, and also leaves it in her sole discretion to choose whether to order additional procedures. 8 C.F.R. § 241.14(d)(6).

69. Once the Secretary makes her determination, the Deputy Secretary can re-certify the individual for continued detention every six months, potentially for the rest of the non-citizen's life. The regulation does not clearly specify what these semi-annual reviews entail, providing only that "the detention decision . . . is subject to ongoing review on a semi-annual basis as provided in this paragraph (d)." It is unclear whether Petitioner will have any other opportunity to confront the evidence against him, to review new evidence, to present new evidence, or otherwise to know the basis for and challenge his detention.

70. The regulation provides no opportunity for any further administrative review of decisions by the Secretary or Deputy Secretary. The notice provided Mr. Hassoun confirms that “Detention decisions under paragraph (d) are not subject to further administrative review.”

71. The regulation is silent as to the availability, scope, or nature of judicial review.

72. The regulation does not impose any obligation on the government to continue to find a country to which it can remove Mr. Hassoun. The regulation purports to authorize the government to hold Mr. Hassoun in detention until he dies in custody, even if the government makes no further effort to find a country that will agree to receive him.

73. On March 11, 2019, Mr. Hassoun was served with the administrative record that the Secretary of Homeland Security will purportedly consider when deciding whether to certify Mr. Hassoun for continued detention pursuant to 8 C.F.R. § 241.14(d).

74. The administrative record consists of seven exhibits. The first exhibit is the Notice to Alien of Intent and Factual Basis to Continue Detention served on Mr. Hassoun on February 22, 2019. Four of the exhibits relate to Mr. Hassoun’s previous criminal and immigration proceedings. One exhibit consists of Mr. Hassoun’s previous habeas filings.

75. The final exhibit consists of a memorandum from FBI Director Christopher Wray recommending that Mr. Hassoun be detained pending removal as a significant threat to national security and a significant risk of terrorism.

76. The factual basis for this recommendation consists solely of three anonymous and uncorroborated reports from other detainees at the BFDF that Mr. Hassoun had attempted to recruit them for various illegal activities.

77. Mr. Hassoun strongly denies all of these allegations and strongly denies that any of the alleged conversations actually occurred.

78. The allegations in the FBI's letter constitute double or triple hearsay and would not be admissible in any criminal prosecution against Mr. Hassoun. Instead, the government would have to produce the individuals who purportedly had these conversations with Mr. Hassoun to testify about those conversations and would require the government to provide more details about any inducements or benefits these jailhouse informants received for their statements.

79. As it stands, the regulation does not provide Mr. Hassoun any opportunity even to see the underlying witness statements given by the individuals who purportedly made these reports to BFDF officials. Mr. Hassoun will have no opportunity to question or cross-examine those witnesses. Indeed, he will not even be allowed to know who the witnesses against him are. The government has provided no information as to the identity of the individuals making the reports other than that they are or were "detainees."

80. In addition, the FBI's letter alleges that Mr. Hassoun used "incendiary rhetoric" in prayer services he conducted for fellow Muslims at BFDF. No further information is provided regarding the content of this "rhetoric" that would allow a decisionmaker to distinguish between First Amendment protected speech and criminal activity.

81. Although Mr. Hassoun was in the custody of the Bureau of Prisons ("BOP") for 165 months, there are no allegations in the FBI's letter pertaining to Mr. Hassoun's time in BOP custody.

82. The government has not charged Mr. Hassoun with new criminal offenses, despite the new allegations in the FBI's letter.

83. Mr. Hassoun emphatically asserts that each of the new allegations in the FBI's letter is false.

Claims

COUNT ONE

The Regulation is Invalid and Ultra Vires

84. The regulation exceeds the authority granted by Congress in 8 U.S.C. § 1231(a)(6), and is therefore invalid.

85. The Supreme Court authoritatively construed that same statutory provision in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and held that it did not authorize indefinite detention. Instead, the Court authoritatively construed the provision to mean that “once removal is no longer reasonably foreseeable, continued detention is not authorized by the statute.” *Id.* at 699.

86. The regulation in question here flatly contradicts the statute, as interpreted by the Supreme Court. The regulation purports to authorize indefinite detention on national security grounds even though the Court held that the statute, as written, must be interpreted not to authorize indefinite detention.

COUNT TWO

**Violation of the Fifth Amendment
Substantive Due Process**

87. The regulation under which Mr. Hassoun is being held violates the U.S. Constitution.

88. It authorizes indefinite preventative detention that could last for the rest of Mr. Hassoun’s natural life based solely on a prediction of future risk or threat. It extends Mr. Hassoun’s detention indefinitely into the future, even after he has completed the criminal sentence that was imposed for the crimes of which he was convicted.

89. This violates the Fifth Amendment to the United States Constitution, as interpreted in a string of Supreme Court cases that have never permitted the government to preventatively imprison a person indefinitely based solely on predictions of future dangerousness. *See Addington v. Texas*, 441 U.S. 418 (1979); *Foucha v. Louisiana*, 504 U.S. 71 (1992); *Kansas v. Hendricks*, 521 U.S. 346 (1997).

90. Moreover, the facts of Mr. Hassoun's case cannot and justify indefinite detention consistent with Substantive Due Process limitations on the government's power to imprison individuals beyond their criminal sentence.

COUNT THREE

Violation of the Fifth Amendment **Procedural Due Process**

91. The regulation is procedurally defective, depriving Mr. Hassoun of Due Process rights. Under the regulation, the government could deprive Mr. Hassoun of the fundamental rights to liberty and to life. It could consign him to die in federal custody. Yet the regulation, and the government's implementation thereof, denies him the most fundamental requirements of Due Process. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

COUNT FOUR

Violation of Fifth Amendment **Void for Vagueness**

92. The Constitution forbids the government from depriving a person of life, liberty or property without fair notice. Here, both the statute and regulation utilized by the government in an attempt to hold Mr. Hassoun indefinitely are unconstitutionally vague and should be rendered void as such.

93. Neither the regulation nor the statute provide definitions of the terms utilized throughout, nor do they provide any guidance for individuals, the court, or the government as to what can be considered to determine that a person held under this statute is a “risk to the community.” 8 U.S.C. § 1231(a)(6).

94. For these reasons, both 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.14(d) are unconstitutionally vague and should be voided.

COUNT FIVE

Violation of Double Jeopardy Clause

95. Mr. Hassoun’s continued imprisonment under the regulation amounts to punishment twice for the same crime.

96. The government, through this regulation, now seeks to transform Mr. Hassoun’s 188-month sentence into a life sentence that will last forever unless the government finds a country that is willing to accept Mr. Hassoun.

97. This amounts to punishment twice for the same offence, in violation of the Double Jeopardy Clause of the U.S. Constitution.

COUNT SIX

Violation of the Fifth Amendment **Equal Protection**

98. The regulation under which Mr. Hassoun is being held violates the right to equal protection of the laws guaranteed by the U.S. Constitution because it explicitly discriminates on the basis of alienage or citizenship status.

99. The regulation singles out only non-citizens for potentially indefinite detention on national security grounds. Detention under the regulation is not tied to the pendency of ongoing removal proceedings or other immigration proceedings. It purports to authorize detention that can

extend for the rest of the non-citizen's natural life. There is no parallel authority to detain a U.S. citizen indefinitely based solely on a determination that the citizen poses a national security risk or terrorism threat.

100. The regulation thus discriminates on its face on the basis of alienage. Such classifications are subject to strict scrutiny under the Constitution, a standard that the regulation cannot withstand.

COUNT SEVEN

Violation of the Regulation

101. Even if 8 C.F.R. § 241.14(d) is constitutional on its face and is not *ultra vires*, the government cannot show that Mr. Hassoun meets the elements required to justify continued detention under the regulation.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests the Court to

1. Declare that 8 C.F.R. § 241.14(d) is *ultra vires*.
2. Declare that Mr. Hassoun's indefinite detention is unlawful and unconstitutional.
3. Declare that 8 C.F.R. § 241.14(d) is unconstitutional.
4. Declare that Mr. Hassoun does not meet the requirements for indefinite preventative detention articulated in 8 C.F.R. § 241.14(d).
5. Order the government to release Mr. Hassoun under appropriate conditions of supervision.
6. Award attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.
7. Grant such further relief as the Court deems equitable and proper.

Dated: March 15, 2019
Buffalo, New York

/s/ A. Nicole Hallett

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Mr. Hassoun as one of Mr. Hassoun's attorneys. I have discussed with Mr. Hassoun the events described in this Petition and have examined all documents referenced herein. On the basis of those discussions and upon my review of those documents, on information and belief, I hereby verify that the factual statements made in the attached Verified Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 15, 2019
Buffalo, New York

/s/ A. Nicole Hallett
A. Nicole Hallett
Counsel for Petitioner

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE 04-60001-CR-COOKE

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIAMI, FLORIDA
JANUARY 22, 2008
TUESDAY - 11:00 A.M.

ADHAM AMIN HASSOUN,
KIFAH WAEI JAYYOUSI,
JOSE PADILLA,
a/k/a "Ibrahim,"
a/k/a "Abu Abdullah the Puerto Rican",
a/k/a "Abu Abdullah Al Mujahir",

Defendants.

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE MARCIA G. COOKE,
UNITED STATES DISTRICT JUDGE

DAY 9

APPEARANCES:

FOR THE GOVERNMENT:

RUSSELL KILLINGER, A.U.S.A.
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1 SENTENCING PROCEEDINGS - 11:15 A.M.

2 THE COURT: For the record, appearing on behalf of the
3 United States.

4 MR. KILLINGER: Good morning, Your Honor. Russ
5 Killinger, Brian Frazier, Stephanie Pell, John Shipley and John
6 Kavanaugh.

7 THE COURT: Appearing on behalf of Defendant Hassoun.

8 MR. SWARTZ: Ken Swartz and Jeanne Baker on behalf of
9 Mr. Hassoun.

10 THE COURT: Appearing on behalf of Defendant Jayyousi.

11 MR. SWOR: William Swor and Dore Louis on behalf of
12 Dr. Jayyousi.

13 THE COURT: Appearing on behalf of Defendant Jose
14 Padilla.

15 MR. CARUSO: Michael Caruso and Orlando do Campo on
16 behalf of Jose Padilla.

17 THE COURT: On behalf of Mr. Hassoun, are you prepared
18 this morning to proceed to sentencing?

19 MS. BAKER: We are.

20 THE COURT: On behalf of Mr. Jayyousi, Mr. Swor, are
21 you prepared to proceed to sentencing this morning?

22 MR. SWOR: Yes, Your Honor.

23 THE COURT: On behalf of Mr. Padilla, Mr. Caruso, are
24 you prepared to proceed with sentencing?

25 MR. CARUSO: Yes, we are, Your Honor.

1 THE COURT: Everyone, you may be seated.

2 Over the past few weeks I held a sentencing hearing in
3 this matter and the hearing was bifurcated. I felt that this
4 bifurcated hearing would enable me to comply with the Supreme
5 Court mandate in Rita, and the District Court should first
6 begin all sentencing proceedings by computing the applicable
7 guideline range.

8 First, I allowed the defendants and the government to
9 present objections to the PSI specifically to the offense
10 conduct, enhancement, criminal history calculations, and role
11 in the offense, and the computation of the advisory guideline
12 range as well. At the conclusion of phase one, I ruled on the
13 various objections and made additions, deletions and
14 corrections to the role in the offense paragraphs contained in
15 the PSI. I also ruled on the defendants' other objections. At
16 the conclusion, each defendant was in the same guideline range,
17 360 to life.

18 The guidelines; however, are not the only
19 consideration the Court must take in making a sentence in this
20 case. Therefore, in the second phase the defendants presented
21 evidence, and I heard arguments on the 18 U.S.C. 3553 factors
22 to determine whether they support that sentence that each
23 defendant requested.

24 Over the course of several days, the defendants
25 presented witnesses, documents, photographs, transcripts of

1 recorded conversations and fax transmissions, witnesses
2 traveled to this hearing from California, Detroit, Washington
3 D.C. and elsewhere. I heard the statements of witnesses, and I
4 read the letters of families, friends and associates.

5 The government also presented evidence in rebuttal.
6 The transcripts of these proceedings cover several hundred
7 pages..

8 In the post Booker, Rita, Gall sentencing world, it is
9 imperative that I make an individual assessment of each
10 defendant based upon the facts presented. This assessment is
11 based on the factors, all is outlined in 18 U.S.C. 3553A

12 → I must impose a sentence sufficient but not greater
13 than necessary to comply with the purposes set forth in 3553A2.
14 In determining this sentence, I must consider the nature and
15 circumstances of the offense, and the history and
16 characteristics of each defendant.

17 The crimes here are very serious, but I think it's
18 important at this juncture to state what this case is not
19 about. No so-called act of terrorism occurred on United States
20 soil. These defendants did not seek to damage United States
21 infrastructure, shipping interests, power plants or government
22 buildings. There was never a plot to harm individuals inside
23 the United States or to kill government or political officials.
24 There was never a plot to overthrow the United States
25 government.

1 The defendants maintain that their acts were not
2 criminal, but educational and humanitarian nature to inform the
3 world and the Muslim community of the status of Muslims abroad
4 and to provide aid for Muslims in need. The jury's verdict
5 reject these arguments and contentions and found that the
6 defendants' acts were criminal.

7 What the defendants sought to do was provide support
8 to people sited in various conflicts involving Muslims around
9 Eastern Europe, the Middle East and Northern Africa was found
10 to be criminal. The evidence indicated the defendants sought
11 to provide financial, personnel and material to individuals
12 engaged in armed conflict in these areas. This material
13 support is a violation of the statutes that form the basis of
14 this indictment.

15 However there is no evidence that these defendants
16 personally maimed, killed or kidnapped anyone in the United
17 States or elsewhere.

18 Also, the government has pointed to no identifiable
19 victims. Despite this, this behavior is a crime. The defense
20 has made much throughout the trial that the government
21 overcharged these defendants, and the defendants have suggested
22 other possible charges that carry a range consistently lower
23 than the sentences available to the government in this case.
24 As I have consistently stated throughout the trial and in other
25 proceedings, charging decisions are well within the province of

1 the Executive Branch.

2 The government contends that each defendant in this
3 case should receive life imprisonment. The government argues
4 the seriousness of the offense, the eight year length of the
5 conspiracy, the nature of the crimes, and this is essentially a
6 conspiracy to solicit murder justified life sentences.

7 Obviously, the defendants categorically disagree, and
8 each defendant has asked this Court to vary and to sentence the
9 defendants outside the advisory guideline range.

10 First, I will review the history and characteristics
11 of each of the defendants based upon the evidence presented at
12 trial and the sentencing hearings.

13 Mr. Hassoun is a devout Muslim. Prior to the instant
14 offense, Mr. Hassoun had never been arrested or convicted of a
15 crime. As a youngster, he lived with a Lebanese conflict, and
16 he knew firsthand what happened to a country when internal
17 politics turned violent. His employer and fellow employees
18 describe him as smart, compassionate and a caring human being.
19 He reached out to people in this community here and overseas,
20 often giving of himself personally and financially. Many wrote
21 letters of support to the Court. The plight of Muslims
22 throughout the world pained and moved him. These strong
23 feelings were his motivation to violate the statutes in this
24 case. He knew what it was like to live through armed conflict
25 and religious persecution.

1 The defendant moved to this country, worked, married
2 and had a family. He worked for Marcom Technologies. His
3 employer and fellow employees spoke highly of him. He was a
4 valuable employee. He worked with many employees of many
5 different religions and ethnicity, and there was never any
6 evidence of conflict between Mr. Hassoun and other employees
7 based upon religious beliefs.

8 The government intercepted most of Mr. Hassoun's
9 telephones, work, home, cell and fax. The interceptions and
10 investigation continued for many, many years. He was
11 questioned and never charged with a crime. The government knew
12 where Mr. Hassoun was, knew what he was doing and the
13 government did nothing.

14 * This fact does not support the government's argument
15 that Mr. Hassoun poses such a danger to the community that he
16 needs to be imprisoned for the rest of his life. In fact, when
17 he was initially arrested and placed in custody for almost two
18 years, it was on Immigration charges and not the charges in
19 this case. He was not in an isolated or special housing
20 facility at that time.

21 Despite monitoring Mr. Hassoun for many years, the
22 government is able to point to only one check to Global Relief
23 Foundation as evidence of his support that he continued after
24 October 26, 2001, thus moving this case into a higher penalty
25 of the revised statute.

1 As to Mr. Jayyousi, he has lived in the United States
2 for almost 30 years. He has served in the United States Navy
3 and became a U.S. citizen. He married and started a family.
4 He is an educated man, finished college and has a PhD. He
5 exhibited excellent competence level in all of his employment.
6 He has held a variety of employment situations; the University
7 System of California, the Detroit public schools and the
8 Washington D.C. public schools.

9 He has worked in the United States and abroad on very
10 sophisticated engineering projects. Some of these projects
11 involve issues relating to and involving our allies, military
12 and possible access to sensitive and confidential information.

13 The people who work with him all spoke highly of his
14 effectiveness and his work ethic. He is a devout Muslim. He
15 was willing to discuss religion with others without conflict.
16 He celebrated the peace efforts in the Middle East. He
17 provided assistance to people in his mosque and in the Muslim
18 community. He also is the kind of neighbor that people would
19 want in a community, and many wrote letters of support.

20 Raised in a refugee camp, he saw firsthand how the
21 sufferers of armed conflict affected communities. When he
22 heard of the armed conflict in the Middle East, Africa and
23 Eastern Europe, he provided financial and other resources to
24 assist those abroad. There is no evidence that Mr. Jayyousi
25 continued his involvement in the instant offense after 1998,

1 the Islam Report, his publication, and there are no intercepts
2 of Mr. Jayyousi. He totally withdrew from the instant
3 conspiracy in this case.

4 In fact, the jury specifically found his involvement
5 in these offenses ceased prior to October 26, 2001. By his own
6 statement at sentencing, he moved beyond his actions post 1998.
7 His efforts and energies were directed elsewhere.

8 Like Mr. Hassoun, Mr. Jayyousi was intercepted over
9 several years. Yet despite government's claim that he is a
10 dangerous individual and deserves to be sentenced to life, the
11 government made no effort to intervene. He continued to work
12 in school systems throughout this country. There is no
13 evidence that Mr. Jayyousi knew, met or even heard of Defendant
14 Padilla prior to these proceedings. As I recall, there are no
15 intercepted phone calls between Mr. Jayyousi and Mr. Padilla.

16 Law enforcement officials interviewed Mr. Jayyousi on
17 several occasions. He informed law enforcement officials
18 before he left the country where he would be, and he also
19 informed of his whereabouts. He even registered with the
20 government when he moved abroad.

21 Throughout most of the pretrial and trial, as I stated
22 previously, Mr. Jayyousi was on bond. He found suitable
23 employment despite the restrictions of bond; and despite the
24 seriousness of his charges and the contacts abroad,
25 Mr. Jayyousi complied with all the conditions of release, and

1 was timely for all court and pretrial proceedings.

2 Mr. Padilla; Mr. Padilla is the only defendant in this
3 matter with a prior criminal record. He has both a juvenile
4 and adult record. His last conviction occurred just prior to
5 the beginning of this conspiracy.

6 He moved to Florida from the Chicago area. He
7 converted to Islam and began to attend the same mosque as
8 Mr. Hassoun. He was also seen at the mosque on Friday prayers
9 and other services. He was often at the mosque where he
10 learned about the conflicts involving Muslim communities in
11 Eastern Europe, Middle East and Africa. He helped out at
12 various mosque functions, and he struggled to learn Arabic as
13 he learned the Qur'an.

14 At the time Mr. Padilla joined the conspiracy, his
15 last criminal conviction was in August 1992, barely 14 months
16 before the beginning of this conspiracy.

17 In 1998, Mr. Padilla left the United States, and there
18 is evidence that he spent time in Europe. There is also
19 evidence, based upon the government exhibit, that he trained at
20 a military training camp. However, based upon the
21 preponderance of the evidence, I do not find GXX1 proof that
22 Mr. Padilla graduated from that program.

23 There are too many inconsistencies; the spelling in
24 the initial translation; the timeframe between the form's
25 initial gathering; and the similarity and spelling of another

1 supposed graduate of the program.

2 However, in finding Mr. Padilla guilty, the jury
3 accepted the government's interpretation of the conversations
4 between Mr. Padilla and Mr. Hassoun. Also, Mr. Hassoun used
5 Mr. Padilla's Arabic nickname in conversations discussing the
6 conspiracy in coded language.

7 When Mr. Padilla returned to the United States, he was
8 detained at the Chicago Airport. He was subsequently arrested
9 on a material witness warrant out of New York. He was then
10 transferred, and kept in a military brig in South Carolina.

11 The facts of his confinement has been the subject of
12 various pleadings and testimony before this Court. Mr. Padilla
13 was held in solitary confinement in harsh conditions, without a
14 mattress, a Qur'an, books, clock, entertainment or interaction
15 with other relatives or visits. Even an attorney was denied
16 him, and he was subject to extreme and environmental stresses,
17 including extreme noise and temperature variation.

18 The government argues that I cannot take prior
19 conditions of confinement, or the potential for harsh
20 conditions, into consideration in fashioning a sentence.

21 I disagree.

22 The cases where pretrial conditions were not allowed
23 were situations where the District Court found that the
24 conditions did not rise to the level to be considered, or where
25 the Court found the defendant had presented insufficient

1 evidence to support a finding concerning the harsh pretrial
2 condition. See Presley 345 F.3d 1205 and Ramirez-Gutierrez at
3 503 F.3d 643.

4 I do find that the conditions were so harsh for
5 Mr. Padilla and against the standard of the usual conditions of
6 pretrial that they warrant consideration in the Court
7 fashioning a sentence in this case.

8 I want to take a moment. My initial order of the
9 issue of Padilla's pretrial detention related to the relevancy
10 of the detention to the charges in this indictment. I found
11 that the conditions were irrelevant in the criminal conduct
12 alleged in the indictment. I stand by that ruling; however, I
13 do want to state at the time of Mr. Padilla's initial
14 detention, the evidence produced at this trial, specifically
15 the intercepted phone calls, were all available to the United
16 States.

17 The sentences that I announce today do reflect the
18 seriousness of the offense and each defendants' culpability in
19 criminal conduct. I have already discussed the seriousness of
20 the offenses and each defendants' culpability. The sentence in
21 this case will serve to inform others that support of
22 activities abroad, no matter how well-intentioned, conspiracy
23 to support murder, maiming and kidnapping will not be tolerated
24 in this country.

25 The defendants in this case were involved in a

1 situation that was very specific in time. The activities were
2 limited to issues abroad and not in the United States. This;
3 however, does not excuse the activities and still warrant a
4 sentence of incarceration.

5 It should also be noted that an incarcerative sentence
6 also recognizes that these defendants will unlikely engage in
7 new criminal conduct, given their age, as they leave the
8 criminal system; that is, as they approach their senior years.

9 Defendants Hassoun and Jayyousi are educated
10 professional men. Each possess unique skills. Mr. Hassoun is
11 a skilled computer programmer. Mr. Jayyousi is an engineer of
12 considerable skills. He has worked on projects that oversee
13 facilities both here and abroad, and he has a Ph.D.

14 It is doubtful that the Bureau of Prisons is capable
15 of providing much in terms of vocational and educational
16 training for these two defendants.

17 Mr. Padilla should be allowed access to vocational and
18 educational training. Prior to leaving the country and his
19 participation in the conspiracy, he was working in a fast food
20 restaurant.

21 Although the bottom of the advisory guideline range is
22 a range of 360 to life, there is no mandatory minimum here.
23 Given the nature of these offenses, incarceration is necessary.

24 I also think it is necessary here to sentence these
25 defendants to prevent unnecessary sentencing disparity. The

1 defense pointed to a number of different cases around the
2 country with similar charges where the defendants received
3 substantially less time than 360 months, which is the bottom of
4 the guideline range here.

5 The government counters that the counts of those
6 convictions did not involve the conspiracy to kill, kidnap,
7 maim or injure, what the government calls the solicitation
8 counts.

9 David Hicks actually was involved in a conflict
10 involving American troops abroad. Yahya Goba, who testified in
11 this case, received a sentence of ten years. It should be
12 noted that he was charged with the new statute of terrorists
13 receiving terrorist's training. He plead guilty and received
14 those ten years.

15 Amed Omar Ali, out of the Eastern District of
16 Virginia, was charged in a nine count indictment. The
17 indictment charged, among other crimes, conspiracy to
18 assassinate a President, conspiracy to commit aircraft piracy,
19 conspiracy to destroy aircraft along with 239(b) and 239(a).
20 The District Court in that case rejected a life sentence and
21 sentenced Mr. Ali to a sentence of 369 months.

22 In Mandhai, the Court of Appeals found a sentencing
23 range of 188 to 235 months was excessive. Although, once
24 again, that is a different charge and less serious than the Ali
25 charge, Mandhai was charged with an attempt to conspire to bomb

1 electrical transformers in Florida in retaliation of the U.S.
2 Government's support of Israel.. He planned to contact
3 government officials after the attack, and demanded a cease of
4 support of countries that oppose Muslims. After two appeals,
5 Mandhai ultimately received a sentence of 168 months.

6 In Awan, which we discussed extensively over the past
7 two weeks, the District Court declined to apply the terrorism
8 enhancement, and sentenced the defendant to 168 months. Once
9 again, Awan was not charged with the solicitation of murder
10 count, rather 239(a).

11 The so-called 20th Highjacker Zacarias Moussaoui
12 received life without parole.

13 Terry Nichols, an accomplice of Timothy McVeigh,
14 responsible for the death of over 150 people, including
15 children, received a life sentence. I point to these two
16 because this is an example, in the past, of what kind of
17 behavior warrants a life sentence, and why I am rejecting life
18 as a sentence in this case.

19 For all the reasons I enunciated above, I will vary
20 from the guideline and sentence the defendants below the
21 advisory guideline range as follows:

22 As to Defendant Hassoun, I sentence the defendant at a
23 level 33, criminal history category four, to 203 months.

24 However, since the defendant will not receive credit for his
25 time in Immigration custody, I am varying the sentence downward

1 by 15 months to a term of 188 months.

2 As to Defendant Jayyousi, recognizing his minimal time
3 in this conspiracy and his efforts consistent with withdrawal,
4 I sentence the defendant at a level 31, criminal history
5 category four, of 152 months.

6 As to Defendant Padilla, unlike the other two
7 defendants, he has a significant criminal record. However, as
8 I stated before, I recognize the significant time that he has
9 spent in harsh conditions. I, therefore, sentence him at a
10 level 33, and 250 months, but vary the sentence downward by 42
11 months to reflect his prior detention in this matter, 208
12 months.

13 As to Defendant Hassoun, it is the judgment of the
14 Court that he be committed to the Bureau of Prisons for a term
15 of 188 months. The term consists of 188 months as to Count 1,
16 60 months as to Count 2, and 180 months as to Count 3. All to
17 be served concurrently.

18 Upon release of imprisonment, the defendant shall be
19 placed on supervised release for a term of 20 years. The term
20 consists of 20 years as to Counts 1 and 3, and three years as
21 to Count 2, also all to run concurrently.

22 Within 72 hours of release from the custody of the
23 Bureau of Prisons, the defendant shall report to the Probation
24 Office where he is released. While on supervised release, the
25 defendant shall not commit any crimes, shall be prohibited from

1 possessing a firearm or other dangerous device, and shall not
2 possess a controlled substance, and shall comply with the
3 standard conditions of supervised release.

4 He shall surrender to Immigration for removal after
5 imprisonment, comply with the financial disclosure
6 requirements, the permissible search requirements. All are
7 outlined in Part G of the pre-sentence report, and the
8 defendant shall pay the \$300 special assessment. That is \$100
9 as to each of the three counts.

10 As to Defendant Jayyousi, it is the judgment of the
11 Court that the Defendant Jayyousi is sentenced to the Bureau of
12 Prisons for a term of 152 months. The term consists of 152
13 months as to Count 1. 60 months as to Count 2. 120 months as
14 to Count 3. All to be served concurrently.

15 Upon release of imprisonment, the defendant shall be
16 placed on supervised release for a term of 20 years. This term
17 consists of 20 years as to Count 1. Three years as to Count 2
18 and 3. All such terms to run concurrently.

19 Within 72 hours of release from the custody of the
20 Bureau of Prisons, the defendant shall report in person to the
21 Probation Office where he is released. While on supervised
22 release, the defendant shall not commit any crimes, will be
23 prohibited from possessing a firearm or other dangerous device,
24 and shall not possess a controlled substance, and shall comply
25 with the standard conditions of supervised release including

1 the following special conditions:

2 The financial disclosure requirements; the employment
3 requirements; and the permissible search requirements. All of
4 these are more specifically outlined in Part G of the
5 pre-sentence report, and he shall also pay the special
6 assessment of \$300.

7 As to Defendant Padilla, the total offense level is
8 33, and the criminal history category is six.

9 It is the judgment of the Court the defendant is
10 sentenced to a term of 208 months as to Count 1. 60 months as
11 to Count 2. 180 months as to Count 3. All to be served
12 concurrently.

13 Upon release of imprisonment, the defendant shall be
14 placed on supervised release for a term of 20 years. That term
15 consists of 20 years as to Counts 1 and 3, and three years as
16 to Count 2. All to run concurrently.

17 Within 72 hours of release from the Bureau of Prisons,
18 the defendant shall report to the Probation Office where he is
19 released. While on supervised release, he shall not possess
20 any firearms or other dangerous devices, shall not possess a
21 controlled substance, and shall comply with the standard
22 conditions of supervised release including the following
23 special conditions:

24 Mental health treatment; the financial disclosure
25 requirements; the employment requirements and the permissible

1 search requirements. All are outlined more specifically in
2 Part G of the pre-sentence report, and he shall pay the special
3 assessment as to each of the counts in the amount of \$300.

4 As to Defendant Hassoun, does the defendant or his
5 counsel object to the Court's findings of fact or the manner in
6 which the sentence was pronounced?

7 MR. SWARTZ: Your Honor, we would like to preserve all
8 of our issues that we raised during the sentencing pursuant to
9 Jones. To the extent that we need to preserve everything again
10 that we raised during the sentencing; yes, Your Honor, I want
11 to object.

12 THE COURT: Mr. Hassoun, you have a right to appeal
13 the sentence imposed. Any notice of appeal must be filed
14 within ten days after the entry of the judgment. if you are
15 unable to pay the cost of appeal, you may apply for leave in
16 forma pauperis. Do you understand that, sir?

17 DEFENDANT HASSOUN: Yes.

18 THE COURT: As to the Defendant Jayyousi, does the
19 defendant or his counsel object to the Court's findings of fact
20 or the manner in which sentence was pronounced?

21 MR. SWOR: Your Honor, as counsel for Mr. Hassoun did,
22 we will preserve all of our previous objections.

23 THE COURT: Mr. Jayyousi, I will also remind you that
24 you have a right to appeal this sentence. Any notice of appeal
25 must be filed within ten days after the entry of the judgment.

1 If you are unable to pay the cost of an appeal, you may apply
2 for leave to appeal in forma pauperis. Do you understand that?

3 DEFENDANT JAYYOUSI: Yes, Your Honor.

4 THE COURT: As to the Defendant Padilla, does the
5 defendant or his counsel object to the Court's findings of fact
6 or the manner in which the sentence was pronounced?

7 MR. CARUSO: Likewise, Your Honor, we would preserve
8 all of our previously made objections both factually and
9 legally.

10 THE COURT: Mr. Padilla, you have a right to appeal
11 the sentence imposed. Any notice of appeal must be filed
12 within ten days after the entry of judgment. If you are unable
13 to pay the cost of appeal, you may apply for leave to appeal in
14 forma pauperis. Do you understand that?

15 DEFENDANT PADILLA: Yes, I do, Your Honor.

16 THE COURT: Counsel for the United States, do you
17 object to the sentence outside of the guideline range.

18 MR. SHIPLEY: Yes, Your Honor, so we are clear on the
19 record, because, obviously, the Court's ruling has deviated
20 from the PSI, so we are clear in our objections, in addition to
21 the objections previously made on the record, we object to the
22 Court's changes in paragraph 12, 17 and 53 of the offense
23 conduct and the corresponding paragraphs in Jayyousi's PSI.

24 We object to the Court's failure to give Jayyousi a
25 three level, or at least a two level increase for role. We

1 object to the Court's failure to give Hassoun a two or three
2 level increase for role. We object to the Court's departure
3 downward under 481.3 to a level 4 and also for failure to
4 consider a level 5.

5 Finally, we object that the sentences imposed are
6 unreasonable in light of the 3553 factors and improperly
7 calculated under the advisory guideline range, specifically
8 including, but not limited to, the Court's finding regarding
9 the history and characteristics of these defendants, including
10 the Court's finding that the jury found that Jayyousi's
11 criminal conduct ceased in 1997; the Court's consideration of
12 Padilla's detention as an enemy combatant and alleged
13 conditions of his detention, as well as the Court's
14 consideration of Hassoun's Immigration status and the time he
15 served there. For all of those reasons, and reasons stated
16 previously on the record, those are our objections.

17 THE COURT: Thank you, Mr. Shipley. Anything further
18 on behalf of the United States?

19 MR. KILLINGER: Nothing, Your Honor.

20 THE COURT: Anything further on behalf of Mr. Hassoun?

21 MR. SWARTZ: Yes, Your Honor, we would ask the Court
22 for a recommendation designation to FCI in Miami. We would
23 also ask the Court to enter an order, and we can supply the
24 written order, that Mr. Hassoun be kept at the FDC while the
25 pending charges, the severed counts, are pending. Until the

1 government decides what we are going to do with that, and we
2 decide what is going to happen with those counts, Your Honor,
3 we would ask that he be kept at FDC here, where he can be seen
4 by his counsel, has got his materials from the case, he can
5 consult with us and see the materials. It will avoid the
6 disruption of the representation of Mr. Hassoun.

7 THE COURT: Let me ask Mr. Killinger. Mr. Killinger,
8 do you plan to proceed with the severed counts prior to the
9 appeal in this matter?

10 MR. KILLINGER: I guess that depends on discussions
11 that we have with the defense. We haven't had any, Judge, to
12 be perfectly candid with you. We do plan to proceed with the
13 severed counts.

14 THE COURT: I will make the recommendation,
15 Mr. Swartz. As you know, the Bureau of Prisons has a mind of
16 its own, particularly with regards to these matters. They may
17 be well within their rights if they determine that after you
18 speak with the government that it may be some time before they
19 proceed with the severed counts, and they will wait to see what
20 happens with the appeal in this matter.

21 MR. SWARTZ: I've been talking with the marshals about
22 this, and I don't want to put them on the spot, but I
23 understand in cases similar to this where there are pending or
24 severed counts that the BOP may keep somebody here at the FDC
25 while they are pending. They may need an order from the Court

1 or something in writing to alert them that this will be treated
2 differently than to just ship him out, because technically they
3 are still pre-trial.

4 MR. KILLINGER: Judge, I am sure that FDC is quite
5 aware of what he is charged with.

6 THE COURT: I am certain they will work this out. But
7 I want you to know, and I am certain that you have discussed
8 this with your client, this is probably one of the many
9 administrative decisions that the BOP will make, that I have
10 little or no control over.

11 MR. SWARTZ: We all know that, Your Honor, that they
12 will do what they do. As far as the recommendation to FCI
13 Miami?

14 THE COURT: I will make a recommendation if he didn't
15 remain at FDC Miami that there be a recommendation that he be
16 housed at FCI Miami.

17 MR. SWARTZ: Even as a permanent designation.

18 THE COURT: I will make that recommendation.

19 MR. SWARTZ: Thank you.

20 THE COURT: Mr. Swor?

21 MR. SWOR: We ask that the Court recommend to the BOP
22 that Doctor Jayyousi be housed at Milan, Michigan.

23 THE COURT: I will make that recommendation.

24 Mr. Jayyousi, I am sure that your counsel has
25 explained to you that it's a recommendation. Once again, I

won't know what administrative procedures the BOP will take.

DEFENDANT JAYYOUSI: Yes, Your Honor. Thank you.

THE COURT: Is there any recommendation for the Defendant Padilla?

MR. CARUSO: Yes, Your Honor. We would like you to recommend to the BOP, given that Jose's family all reside in South Florida, a facility that is as close to South Florida as possible.

THE COURT: I will make that recommendation, Mr. Padilla. Once again, I will inform you, as I have to the other defendants, that that is a decision that I have little or no control over, but I will make that recommendation.

Thank you very much everyone.

[Sentencing proceedings conclude at 12:15 p.m.]

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

DATE

ROBIN MARIE DISPENZIERI, RPR
Official Federal Court Reporter
United States District Court
301 North Miami Ave., 6th Floor
Miami, FL 33128 - (305) 523-5158

EXHIBIT B

**DEFENDANT HASSOUN'S SENTENCING MEMORANDUM SETTING FORTH
MOTION FOR DOWNWARD DEPARTURE AND
REQUEST FOR BELOW-GUIDELINES SENTENCE**

COMPOSITE EXHIBIT A

November 22, 2007

To : Honorable Judge Cooke
From : Nahed Wannous
Subject: Adham Hassoun

Dear Honorable Judge Cooke,

This letter is about my husband, Adham Hassoun. I appreciate your taking the time to read it. What you will be reading is based on my strong knowledge of Adham Hassoun as my husband, and as the father of my children. Living with him for years also gave me a great idea about his relation with his parents especially with his sister who was also my neighbor, his friendship with people, his commitment to his job, and his interaction with the community in general.

I've known Adham Hassoun for a long time before our marriage, long enough to confirm that he is a good person. He never had any problems with the law, and he never tried to hurt anyone. On the contrary, he was very loving, caring, responsible, reliable, and protective to his parents and family. He was a sincere, generous, and very helpful friend. He was a very reliable, hardworking, and dedicated employee. He loved to bring happiness to people, especially to children; I've seen him going out of his way to bring gifts to distribute to the children of the community during holidays. He was very merciful and generous with orphans, widowed poor women who had no supporters, needy people, and people suffering from natural or war disasters. With his smartness, strong personality, sense of humor, generosity, wisdom, and great readiness for help at any time, Adham Hassoun built a very strong relation with everybody around him: parents, wife, children, neighbors, friends, co-workers, and the whole community in general.

As the father of my children, Adham Hassoun is one of the best fathers I've ever met. He loves all children in general, and specifically his own. He plays with them like he's one of them. He goes down to their level and puts himself in their places before he talks to them. It was extremely important for him to watch the children as long as they were awake to make sure they didn't get hurt, and to make sure they were happy and satisfied. The latter gave him a special pleasure. At the same time, he is very firm with them when they do anything wrong. That's why his children love him, respect him, and obey him at the same time.

Adham Hassoun is indeed a role model for his children. When the teacher of his thirteen-year-old son asked him to write about things he would like to change in his father to make the latter closer to him, he answered: "I like my father the way he is." He used to do a lot of activities with his kids: playing indoor and outdoor, going to the

park, playing computer and Nintendo games, watching TV, feeding each other, working in the backyard, cleaning up, etc...He sometimes took them to work with him, they were his helpers when he used to fix something broken inside the house - for he was a handyman, too - not to mention the disciplinary role he fulfilled at all times as their father.

Your Honor, the impact of Adham Hassoun's absence on his children is very severe, especially nowadays where you have to prove yourself in the society and have a very strong personality to get your rights from others, otherwise they will be lost and you will be stepped on. My children are still struggling to fit in, and every time somebody hurts them the first thing they say: If Dad were here, this wouldn't have happened. They feel they lost the support they need with the absence of their father, and there is nobody to defend them and stand side-by-side with them. Don't wonder, your Honor, about me. I'm usually very shy and introvert. So all I tell them is to forgive whoever hurts them and God will reward them. My answer, of course, never satisfies them.

My seven-year-old son doesn't know his father except from the pictures and from the things his older brothers and I tell him. He asked me once: "Why do all my friends have fathers but not me?" I broke with tears. "Of course you have a father, don't you talk to him on the phone? They took him by mistake, and when they realize they're wrong they will release him, hopefully soon." I said. His teachers don't know anything about his father's situation, still one of them told me once: "The way he deals with his friends shows that there is a great anger inside him and he wants to release it."....The same words were said by another teacher about my middle, thirteen-year-old son....

Coming to my fifteen-year-old son, his father's absence at this age makes him think that he is the man now, not in the positive way that makes him responsible, but rather in the sense that he wants to control his brothers and do everything around the house his own way without any consideration for his brother's feelings or opinions. This surely brings lots of problems to my family on a daily basis, not to mention the struggle I go through when he wants to go out with his friends or when he wants to do anything without accepting any question from me, his Mom, for he's an independent young adult now! When I show him that such behavior is unacceptable to me he blames it on me, for I don't know how to deal with him - in his sight - and if his Dad were here he would have treated him fairly and he would have had a happier life.

Furthermore, your Honor, the absence of Adham Hassoun is shaping the manhood of all his children very wrongly. It happened many times that they say: "When we grow up we will take money from our uncle to do so and so"...That's how they are being raised now. The picture of the hardworking father who is struggling to get the money needed to support his family is missing, and they think they will keep

depending on their uncle for the rest of their life. I try hard to explain that they need to work to support themselves and their families in the future. But the practical example to follow is gone with the imprisonment of their father...

Your Honor, once I start talking about the problems I'm having with my children due to their father's absence, it is hard to stop. Please excuse me. I'll try to move on.

As my husband, Adham Hassoun took good care of me. He used to take permission from his supervisor at work to take me to the doctor and never asked me to go by myself – when he knew I'm uncomfortable with the idea – or to cancel my appointment. He defended and protected me: When he heard people making fun of me because of the way I dress, he asked them to be nice and respectful. He was very helpful sometimes: He used to help me around the house whenever he felt I was overwhelmed by the many responsibilities I had or when I was tired. He sometimes vacuumed, or picked up the children's toys distributed everywhere downstairs, or cleaned up the kitchen after we finished eating. He even prepared a delicious tuna salad sometimes. He was very generous: If I asked him to buy me one outfit he would buy three. And after I started driving he used to tell me: "You have the credit card; go buy what you need without asking me." Your Honor, my husband Adham Hassoun is a very responsible family leader. He provided his children and myself with everything we needed around the house to make us carry a happy and easy life. He worked long hours and sacrificed his comfort to support us financially. During our downs, and every couple has their ups-and-downs, he showed great wisdom containing my instant, angry impulses. My husband, Adham Hassoun, really values familial life. He appreciated what I did for him and for the children, and he used to make a nice and short supplication asking God to reward me and give me the strength. Those few words used to give me the emotional push-up I needed that day. In all, your honor, Adham Hassoun is a good, loving, caring, reliable, helpful, protective, and generous husband.

Here, allow me, your Honor, to take more time from you to open my heart for you and talk about the impact of my husband's imprisonment on my life. Mere thinking of writing about it brings tears to my eyes. I had no family around me in the U.S., no mother, no father, no sister, and no brother. My husband Adham Hassoun was all my family. I sometimes asked **him** to be the judge between himself and me when he did something upsetting to me, so he used to be a fair judge when I turned to him nicely, and he used to apologize. Here in Lebanon I don't have any family around me either. With the absence of my husband, I have nobody to turn to. I feel so lonely, and emotionally impaired. I need to feel that somebody is there for me whenever I need him, to support me when I'm facing problems, to encourage me when I get weak, to appreciate my hard work with the children and tell me those thankful words that make me forget my fatigue. I can't find that somebody with this forceful separation from my

husband.


Your Honor, raising three boys alone is very hard. Two of them are teen-agers (15 and 13 years old). Do you know what that means to me? Struggle, nervousness, exhaustion, stress, depression, and wishing death for myself every single day rather than having to raise them by myself without the father figure that they badly need to interact with on a daily basis.

Your Honor, when someone does something wrong and he gets severely punished for it, I say: despite all the heart-breaking suffering he's experiencing, he deserves it because big mistakes bring big punishments. It breaks my heart when I think about my husband knowing that he doesn't deserve the suffering he's living and which is leading to my own and my kids suffering, too. Taken away from his wife and children, taken away from the comfort of his home, taken away from his career, deprived from his social life, which is extremely valuable for him, and kept in prison for long years without the tiniest substantial evidence for the charge he was accused of?!!

Your Honor, long before the trial started, my husband understood that he could plead guilty and be assured a fairly short term of years in jail. But my husband, knowing that he didn't hurt anyone - and he didn't even try to - not in the U.S. nor in any other country, refused because **he believed in the American justice.**

Your Honor, the normal and happy life of five people (Adham Hassoun, myself, and our three children) depends directly on your decision at this stage. The reunion of our family depends on you. We badly need your help. I hope you help us.

Please help.

Truly,
Nahed Wannous


November 1, 2007

Dear Judge Cooke:

I'm writing this letter to describe my relationship over the years with Adham Hassoun.

I have known him since he came to work for MarCom Technologies in the 90's as a computer programmer. When he first came to MarCom we were a small company with the intent at being the best Marketing firm in the industry. When hiring we were looking for people who would share in our growth and mission statement, and Adham brought that desire to the table.

We worked very closely the first few years, Adham as a programmer and my position as the Center Manager. I came to rely on Adham during his hours at work and numerous times would have to call him off hours at home. No matter the time of day Adham never refused to help. He knew that if we could not resolve the issue that hundreds of people would be sent home for the day, causing them to lose pay. Over the years I do not recall one single time that when called he was not there to help me. As we grew into multiple centers we hired more programmers and I did not work daily with Adham but still kept him as a contact for off hours issues, which even if he was not assigned as the programmer on call for that day, he still helped.

I did not socialize with Adham's family, but watched the birth and growth of his children that he brought to the office over the years. He openly showed his love and support for his family and friends.

I had on many occasions watched him help co-workers with car problems, loss of loved ones, financial issues, just being Adham, a man I always stated would give you the last \$5.00 he had.

The Adham I've had the pleasure of knowing was a hard working man dedicated to God, Family, and work. He has been found guilty by a jury of his peers, but not proven guilty in my eyes. He is still my friend.

Sincerely,


Deborah Lynn Gilliam

MarCom a Cunningham Service Group Company

7771 W. OAKLAND PARK BLVD., #100, SUNRISE, FLORIDA 33351 • TEL (954) 747-6566 • TEL (800) 725-0900 • FAX (954) 741-1329

Putting the Right Pieces Together for a Successful Campaign.

Ed Gonzalez
7771 W Oakland Park Blvd
Suite 100
Sunrise, FL 33351

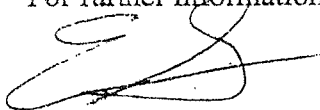
To Whom It May Concern:

Adham Hassoun came to work for my company in April 1996 as a computer programmer. We were at that time a small start up company. Adham's role in helping grow the company was major. He never hesitated to help in any department needed. I worked closely with him for the first two years, and as the company grew, Adham assumed the role he was groomed for. He enabled me to focus on the administrative side of our growth, with the peace of mind that the day to day would be taken care of. Adham was trusted with the highest level of security in the company.

I also had many opportunities to spend personal time with Adham. We attended lunches, dinners, and social functions.

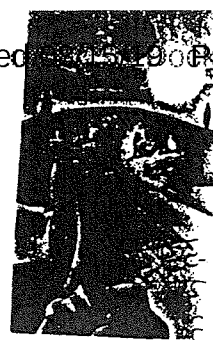
I personally feel that Adham is a very loyal friend, a very trustworthy employee and a very straight forward person.

For further information, please feel free to contact me.



Ed Gonzalez
(954) 747-6566





MarCom
7771 W. OAKLAND PARK BLVD., #100
SUNRISE, FLORIDA 33351
(954)747-6567 • (800)725-0900
Fax (954)741-1329
E-MAIL: hmoustaf@marcom-csg.com

October 16, 2002

HESHAM MOUSTAFA
874 CRYSTAL LAKE DR
POMPANO BEACH FL 33064

To Whom It May Concern:

I have worked with Adham Hassoon at MarCom Technologies, and had known Adham for a long time, and he is proven to be hard working man and trustworthy, and a coworker that you can count on and will go out of his way to help his coworkers, Adham Hassoon was computer programmer, and he was doing a good job reliable, and responsible.

For further information please feel free to contact me.

Hesham Moustafa
Coworker

10/16/02



Rose Gonzalez
My Commission CC898538
Expires December 28, 2003

Alton W Corbe
8105 NW 61st Street
A204
Tamarac, FL 33321
(954) 720-0160

To Whom It May Concern:

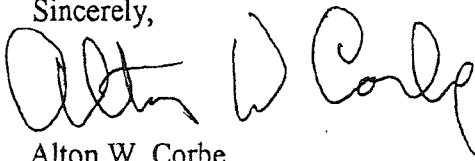
I am writing this letter on behalf of Adham Hassoun. I have been an acquaintance and co-worker to Adham for the past three plus years.

I have known Adham as a very considerate and compassionate person. Please heed the following:

- Adham has always been content with his role as a Marcom employe and always participates as a "Team Player"
- Adham has NEVER said or done anything in a threatening or menacing way; especially in regards to his feelings for Americans or American politics. He has never said anything bad or derogatory about America.
- When a friend or co-worker had a problem, Adham was always there to support them.

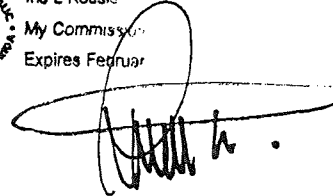
I, for one, am proud to say that Adham is my friend and co-worker. I believe that he is a worthy citizen and someday hope to see him become a proud American.

Sincerely,


Alton W. Corbe



Iris L. Kossie
My Commission
Expires February

 10/18/02.

MarCom

7771 W. OAKLAND PARK BLVD., #100
SUNRISE, FLORIDA 33351
(954)747-6566 • (800)725-0900
FAX (954)741-1329
E-MAIL: dammons@marcom-csg.com

October 18, 2002

David J. Ammons
5925 North Sable Cir
Margate Florida, 33063

To Whom It May Concern

I have work with Adham Hassoon at MarCom Technologies for about six (6) years and he has been easy to work with. He has helped me with my work from time to time. He is always willing to do more than what his job required. His fellow workers seem to like him and get along very well. He missed here at MarCom.

You may contact me for more information at any time.

Your Truly

David J. Ammons
Coworker



Rose Gonzalez
My Commission CC898538
Expires December 28, 2003

RECEIVED
KRISTEN L. HARRIS
OCT 20 2002

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October 16, 2002

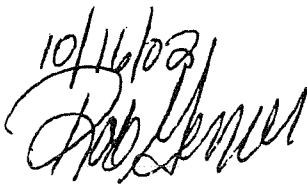
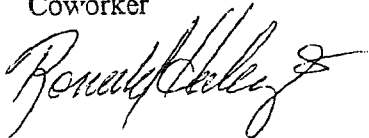
Ronald Haley
13731 Oak Ridge Dr
Davie, FL 33325

To whom it may concern:

I met Adham Hassoon when I became employed at Marcom Technologies four years ago. He has always treated me extremely well, been very helpful, and a good worker. Adham has always shown a sense of humor and gone out of his way to make others feel welcome. Everyone has felt the void in our department since he has been unavailable.

Please feel free to contact me if you would like further information.

Thank you,
Ronald Haley
Coworker



Rose Gonzalez

My Commission CC898538

Expires December 28, 2003

October 18, 2002

SHARFUDDIN M. SYED
7561 NW 1ST STREET
PEMBROKE PINES, FL 33024



MarCom

7771 W. OAKLAND PARK BLVD., #100
SUNRISE, FLORIDA 33351
(954) 747-6566 • (800) 725-0900
FAX (954) 741-1329
E-MAIL: syeds@marcom-csg.com

To Whom It May Concern:

I have worked with ADHAM HASSOON for the last six years at MARCOM TECHNOLOGIES as Programmer Analyst. I found him extremely knowledgeable, hard working and helpful at work. He was very creative, honest and loyal Coworker. It was a great pleasure working with him. It will be very hard to find his replacement.

Please feel free to contact me if you have any questions at my home phone 954-987-6897.

Thank you,

Sharfuddin Syed

Sharfuddin Syed
Programmer Analyst
MARCOM TECHNOLOGIES

*10/18/03,
Rose Gonzalez*



Rose Gonzalez
My Commission CC898538
Expires December 28, 2003

1258 NW 84th DR
Coral Springs, FL 33071
October 17, 2002

Dear Sir:


This letter is to confirm that I worked with Adham Hassoon at Marcom Technologies, and have known Adham for the last four years. Adham and I are coworkers in the computer department. He is very well liked by all coworkers and peers. I have found him to be considerate, polite and courteous at all times. Adham has shown to me to be very reliable and dedicated at his position at MarCom and has bent over backwards to assist me. He would think nothing of giving you his last dollar. From my discussions with Adham, his family and friends are his priority in life. It is a pleasure to have Adham as a friend

If there is anything I can do to assist Adham in any way, please contact me at MarCom.

Sincerely,



Anthony Ferro



Rose Gonzalez
My Commission CC898538
Expires December 28, 2003

10/18/2002

To Whom It May Concern:

I German Carmona was employed with Marcom in 1999 for approximately 1 year. I had the pleasure of working with Adham Hassoun. He is a friend, a family man and posses good family values.

Should you need more information, please call (954) 812-3006.

Thanks,

German Carmona
German Carmona

10/18/02
Rose Gonzalez



Rose Gonzalez
My Commission CC898538
Expires December 28, 2003

September 24, 2003

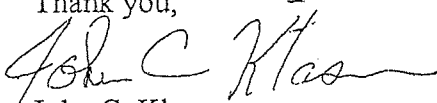
John C. Klasen
8823 NW 20th Manor
Coral Springs, FL 33071

To whom it may concern:

I John C. Klasen have been employed at Marcom Technologies since June of 1996 and have worked with Adham Hassoun on a daily basis during that time. I have found Adham to be an honest, hard-working and conscientious. I have spent many a lunch hour with him and consider him to be a good friend.

Should you need any further information, please feel free to call:
(954)747-6566 x103 (work) or (954)292-1352 (cell)

Thank you,


John C. Klasen

September 23, 2003

Shushane Dean
3570 NW 85th Way
Sunrise, FL 33351

To Whom It May Concern;

I Shushane Dean, have worked with Adham Hassoon at MarCom Technologies for 3 years. I worked directly with Adham during this period of time as well as became established a friendship. I have found Adham to be reliable, trustworthy and man of his word.

For further information please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Shushane Dean".

Shushane Dean
Co-Worker

October 15, 2002

Dear Sir or Madam:

It is with some sadness that I write this letter about Adham Hassoun. I, along with millions of other Americans felt sorrow, anger and dismay on September 11, 2001. We were joined in these feelings by countless others from around the world. In my anger, I wanted to strike out at the people responsible for the attacks. I really did not care if we had 100% proof; all I wanted was some action.

Since that period of time, I have remembered what America means to the world. We have been a symbol of hope and freedom for well over 200 years. Our national monuments include gifts from other countries-with the Statue of Liberty, a gift from a foreign people symbolizing what we stood for. We had to temper our anger with a sense of justice and a sense of what was right.

I have had a personal experience with the world gone awry by seeing the arrest and subsequent incarceration of Adham Hassoun. I could use my time to watch TV or do a million other things besides get involved. Many people here in this country do that. The elections are a good example of the relative unwillingness of people to get involved. I felt, though, that if I did not speak out, that I would be giving up not only a part of my freedom, but also the basic freedom that has been a part of the United States since the beginning. Refusal to get involved has resulted in the Holocaust in Germany and the McCarthy era hearings during the early 50s in this country. My not writing a letter for Adham would probably not cause such dire consequences, but if put together with millions of other people's lack of involvement, could result in a change in the way the United States conducts it's business.

That result, regardless of the degree of the change, would mean that the terrorists won on September 11th. The sacrifices people have made since the beginning of our country would be diluted. Therefore, I feel compelled to say something in support of Adham.

I have worked with Marcom since 1994 and worked for Results Technologies for a year prior to that. During that time, I have had numerous interactions with Adham. Sometimes, it was as simple as just being invited for some extra pizza he had at lunch. Virtually every time that I met Adham, he always had a friendly comment. More than this, though, I saw him go out of his way to help his coworkers when they were in need. He was devoted to his family and has brought them to the job site on occasion. I saw how hard he worked for the company. I saw how responsive he was to handling the problems I had with the computers. On September 11th, I saw a man in sorrow because of the pain his adopted country was experiencing. Never once did I see anything that would convince me that he was an extremist who would cause harm to others.

Our country was founded upon some basic principles. One of the foundations was that every person had basic, innate rights. Those rights were not dependent upon one's circumstances of birth and they were not dependent upon the type of crime a person may have committed. Our laws provide for the preservation of those rights. Those rights can only be abridged in favor of the community rights after some difficult decisions and stringent justification. Normally, those decisions, and the justification that brings the decision about are part of a public forum.

Unfortunately, for both Adham and our country, the forum has not been public. While I sincerely believe that Adham is no threat to the United States, and is in fact an asset, I also believe the government has a responsibility to protect us. If the government has some basis for holding Adham, then this reasoning should be a part of the public forum. If the government has nothing, though, then a grave injustice is being done to an innocent man. Our reactions to Adham should not be based upon the fears and anger arising from the events of September 11th, but should be based on the principles that have been a part of our country since July 4th, 1776.

Sincerely,



Valdis Ozols



In the name of Allah Most Gracious, Most Merciful

THE ISLAMIC SCHOOL OF MIAMI, INC.

September 24, 2003

TO WHOM IT MAY CONCERN

Dear Sir or Madam:

Re: Mr. Adham Hassoun

It is my great pleasure to write this reference letter on behalf of Mr. Adham Hassoun. I have known him for ten years. Mr. Hassoun is very active in providing service to the community. He is very dedicated and caring person and he possesses excellent moral values. On a personal note, I have found Mr. Hassoun to be a very bright and enthusiastic individual who carries out his duties always in an outstanding fashion. I strongly recommend him and would be happy to answer any question you may have.

Sincerely,

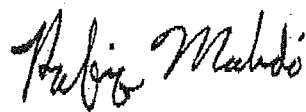
Bilal Karakira,
Imam of Masjid Annour

Thursday, Sept. 25, 2003

To Whom It May Concern

Let it be known that I, Rafiq Mahdi, Imam of Masjid Al-Iman and formerly Imam of The Islamic Center of Miami, FL, do hereby express my support for Mr. Adham Hassoun. I have known Mr. Hassoun for several years. He has always shown passion for truth and justice. He has committed no crime and should be afforded the human rights that this nation has become well known for upholding.

I am dismayed and appalled at his prolonged detention. In light of the fact that there have been no charges brought against Mr. Hassoun and that he, in my opinion, poses absolutely no threat to the security of our nation, please do the right thing and release him from detention, so that he may once again be a productive member of our society.



Sincerely Yours,
Rafiq Mahdi
(954) 224-0242

Masjid Al-Iman
2542 Franklin Dr.
Ft. Lauderdale, FL 33311

Abid & Susan Hadrous
518 Woodgate Circle
Sunrise, Florida 33326

November 6, 2003

Krome Detention Center
Miami, Florida

Re: Adham Hassoun

We write this letter on behalf of Mr. Adham Hassoun who has been detained in your facility for the past 17 months. Personally, we have known Adham for over 10 years and as American citizens, we would like to tell you about him. Please try to realize how much Adham is valued in our South Florida Muslim community. He has always gone out of his way to assist families at times with little regard for his own financial outcome. But his help to the community is much more than financial. That's just how he is. Adham will rally the community at a moments notice for such activities as picnics, lectures, to help other Muslims who need help moving, need food, visiting people for Dawa, or even to provide support by just listening to people. He is truly a magnet for this community and it has been a shame that he is unable to be here with his friends and family because he is greatly missed by all of the Muslims in South Florida. He is truly a social worker who would always like to help others especially orphans and the needy. He is a family man and we believe he is unfairly separated from his family and especially his very young children who were so attached to him.

I hope that you will please consider this letter when deciding the future for Mr. Adham Hassoun.

Thank you for your consideration in this matter.

Abid & Susan Hadrous

September 25, 2003

To Whom It May Concern

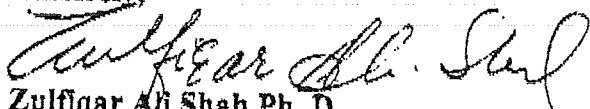
I have been working as the Director of the School of Islamic Studies at Broward since January of 2000. I have known Mr. Adham Hassoun since then through his involvement in a number of religious and community activities. I have always found him caring for others and helping people in need without any considerations to their race, color or social backgrounds. He was known among the community members as kind, helpful and willing to help anybody who would approach him.

Please feel free to call me if I can be of any further assistance regarding this matter. My contact numbers are as follows:

Phone: 954-741-8130

Fax: 954-741-8788

Sincerely,



Zulfikar Ali Shah Ph. D.

Director School of Islamic Studies at Broward
4505 NW 103 Ave., Sunrise, FL 33351

10678 Rolpl Palm Blvd
Apt. 78
Coral Springs, FL
954-755-7157

9.24.03

To whom it may concern

This is to state that I have known Mr. Adham Hassoun since March, 2000. From the beginning, he always showed passion and caring for my family, even when one of my kids were sick, he would bring medicine when they needed it. Our welfare was always first -

He also introduced me to my husband ... acting on my behalf like a big brother to ensure I had a nice wedding. My husband had at one time, lost his job, and Mr. Hassoun immediately came to our aid, helping us with food, bills, making sure we had what we needed when we were evicted, he assisted us in finding a new home, taking time from his own family as well. He had helped me get a temporary job at his place of employment.

MARCOM, so my husband and I could manage.

Mr. Hassoun is a very committed man, always willing to go out of his way to help anyone, muslim or not.

He is a morally sound man, always ready to stop and help anyone, anytime. He is very highly respected in the muslim community.

His wife and children were very kind to me as well.

He has a young boy, and

I remember his birth, Mr.

Hassoun had been so happy!

Mr. Hassoun has in the years

I know him, never had

a bad word or unkind manner for anyone he met.

I hope and pray that he can

be released soon, to be with

his wife and children who even

yet still look for "Daddy")

IF I can help in any

walk to speak on Mr. Hussain's
behalf, I would be very
honored and flattered.

Thank you,
Linda Kandel
Linda Kandel

Linda Kandel
10678 Royal Palm Blvd.
Apt. 78
Coral Springs, FL 33065
954-755-7157

ECKERD

Fadi Hamad
1337 NW 129th Way
Sunrise, FL 33323

Fadi Hamad, Pharm.D.
Registered Pharmacist

1801 North Federal Highway, Hollywood, FL 33020
Phone: 954.929.9500 Fax: 954.921.2912

September 23, 2003

To whom it may concern

I have known Mr. Adham Hassoun, who is a second cousin to my mother, for the last thirteen years. I knew him as a lovely, compassionate, peaceful, and helpful for others.

In addition to this, Mr. Hassoun was very dedicated to his family.

I hope Mr. Hassoun be set free, so he can unite with his family and serve the country he loves to live in.

Best regards

Fadi Hamad

Wayne E. Rawlins

1761 NW 96th Terrace, Unit 3K ♦ Pembroke Pines, Florida ♦ 33024 ♦ 954.885.1381 ♦ rawlin_w@bellsouth.net

September 24, 2003

To Whom It May Concern:

As a Muslim and a community justice consultant I have personally known Mr. Adaham Hasson for the past seven years. He has been an active person in the community - always working for the good of his fellow human being. He and his family have suffered tremendously during his detainment and both his family and the South Florida community will welcome his release. I strongly support his release.

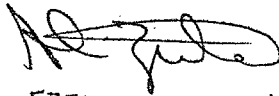
Sincerely,



Wayne E. Rawlins

To Whom It May Concern:

I, Ali Ziajeh, know Mr. Adham Hassoun for the past few years, that he is a very outstanding individual and asset in the community. He is very helpful and compassionate in the helping of others solving their problems, regardless of race, ethic group or religion. He is also outstanding husband and father to his wife and kids.



5337 NW 93rd Ave
Sunrise FL 33351

9-21-03

Abed Elatab
6001 No. Falls Circle Dr. #400
Lauderhill, FL. 33319

September 25, 2003

To Whom It May Concern,

Regarding Adham Hassoun. I have known him for twelve years. In those twelve years, I only saw a very kind and good-hearted person. Adham is always there when people need him most. He is also a good provider, a great father and family man.

All of his family and friends miss and love him.

Sincerely,


Abed Elatab

A Cry for Help

Dear

In September 1989, Adham Hassoun came to the United States to visit his sister. Adham was impressed by this country and decided to finish his Master's Degree in Computer Science at Nova University. In October 1990, his mother filed an I-130 application for him, sponsoring him for Immigration into this country. The application was approved. October 1996, Adham filed an I-485 application to adjust his status to that of a permanent resident. Since then, Adham has met all of the requirements for him to stay in this country. Adham's mother, sister, and all three children are American citizens and Adham has pursued citizenship status for the majority of the thirteen years that he has lived here.

On June 12th, 2002, Adham was detained and taken to Krome Detention Center in Miami, FL, an Immigration and Naturalization Service detention facility. The stated reason for the detention was "overstaying his student visa". Since his detention, Adham was found to be deportable to Lebanon. At this point, Adham is a stateless person. He was born in Lebanon to Palestinian parents, but is not a Lebanese citizen and is not allowed reentry into that country.

Like many other people throughout the world, Adham has admired the United States for its constitution, government and freedom. During his stay here, that appreciation has become deeper. In addition to his rights and freedom here in America, Adham has been cognizant of his responsibilities and has worked hard to meet them. He has a clean record, has never been arrested and pays his taxes and has faithfully renewed his work permit. In appreciation for the gifts he has received here in this country, Adham has worked to help other people in need. His help ranges from moral support to financial assistance to those in need. His generosity and concern for the welfare of others has made him a well-known and liked member of his community. His family, friends, co-workers and neighbors feel that he has become an important part of society.

In addition to his mother and sister, Adham has three boys, all American citizens by birth. Their ages are two, eight, and ten. The separation of the last eight months has been difficult for the children as well as for Adham. Adham is a man who believes strongly in family values and has worked hard to become a good provider for his family.

The United States has long been a beacon of freedom to the rest of the world. It is important to the world as a whole that America should be protected and that the residents here have a secure place to live. America needs to continue to be the beacon of freedom. That freedom needs to be here as Adham's three children grow up and pass it on as a legacy to their own children.

Adham has given up eight months of his life to help preserve that freedom. He loves the United States and wants to continue his progress towards obtaining citizenship here. We ask that you release Adham so he can be with his family. We ask that Adham be released so that he can once again taste the freedom, which has caused him to make America his home.

His family needs Adham. His community misses him and his coworkers look forward to his return. His adopted country needs Adham. In a time where people who help others seem to be a small percentage of the population, Adham's generosity is sorely missed.

We realize that the judicial system today is overworked and under appreciated. It is our hope that you will find the time to review Adham's case and let him rejoin his family and community.

Sincerely,
The Adham Hassoun Family

EXHIBIT C

U.S. Department of Homeland Security
500 12th Street, SW
Mailstop 5900
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

Hassoun, Adham
c/o U.S. Immigration and Customs Enforcement
Buffalo Field Office

A074 079 096

Nicole Hallet, Esq.
University at Buffalo School of Law, Community Justice Clinic
507 O'Brian Hall
Buffalo, NY 14260

Notice of Intent and Factual Basis to Continue Detention

Pursuant to the provisions of 8 C.F.R. § 241.14(d), U.S. Immigration and Customs Enforcement (ICE), an agency within the U.S. Department of Homeland Security, is initiating procedures to determine whether you will be subject to continued detention as an alien whose release presents a significant threat to the national security or a significant risk of terrorism. This notice advises you of the factual basis underlying ICE's evaluation of your detention under 8 C.F.R. § 241.14(d).

You were administratively arrested by the former Immigration and Naturalization Service on June 13, 2002. On June 27, 2003 you were issued a final order of removal to Lebanon after all immigration relief and protection, including your application for deferral of removal to Lebanon under the regulations implementing U.S. obligations under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was denied. On January 22, 2008, you were convicted in the Southern District of Florida of Conspiracy to Murder, Kidnap & Maim Persons in a Foreign Country, in violation of 18 U.S.C. § 956(a)(1), Conspiracy to Provide Material Support for Terrorism, in violation of 18 U.S.C. § 371, and Material Support to Terrorists, in violation of 18 U.S.C. § 2339A(a), and were sentenced to an 188-month term of incarceration followed by 20 years of supervised release. The charges against you stemmed from your role in a conspiracy recruiting fighters and providing material support to terrorist groups overseas engaging in "jihad" in Chechnya, Bosnia, Kosovo, Algeria, Afghanistan, Pakistan, Somalia, Eritrea and Libya. Upon completion of your sentence on October 10, 2017, you entered ICE custody.

Your case has been reviewed pursuant to *Zadvydas v. Davis*, 533 U.S. 678 (2001), and ICE has initiated proceedings to determine whether your detention should be continued pursuant to 8 C.F.R. § 241.14(d). ICE may continue to detain an alien if removal is not significantly likely in the reasonably foreseeable future and whose release would pose a special danger to the public, if: (i) the alien is a person described in section 212(a)(3)(A) or (B) or section 237(a)(4)(A) or (B) of the Immigration and Nationality Act or the alien has engaged or will likely engage in any other activity that endangers the national security; (ii) the alien's release presents a significant threat to

the national security or a significant risk of terrorism; and (iii) no conditions of release can reasonably be expected to avoid the threat to the national security or the risk of terrorism.

Your case appears to meet these three criteria because you assumed a leadership role in a criminal conspiracy to recruit fighters and provide material support to terrorist groups, and because you remain a continuing threat of recruiting, planning, and providing material support for terrorist activity. You will be provided with a reasonable opportunity to review any evidence against you. You have the opportunity to submit a statement and any additional information to ICE for consideration before ICE submits a formal recommendation to the Secretary of the Department Homeland Security to certify your continued detention. Please submit any statement or additional information within 30 days of this notice.

If the Secretary determines that you should remain detained under 8 C.F.R. § 241.14(d), your custody status will be reviewed every six months and further certifications may be made by the Secretary or Deputy Secretary. Detention decisions under paragraph (d) are not subject to further administrative review. 8 C.F.R. § 241.14(d)(7).



Matthew T. Albence
Executive Associate Director and Senior Official Performing
the Duties of Deputy Director,
U.S. Immigration and Customs Enforcement

2/22/19
Date

U.S. Department of Homeland Security
500 12th Street, SW
Mailstop 5900
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

Notice of Procedures under 8 C.F.R. § 241.14(d)

Pursuant to the provisions of 8 C.F.R. § 241.14(d), U.S. Immigration and Customs Enforcement (ICE), an agency within the U.S. Department of Homeland Security (DHS), is initiating procedures to determine whether you will be subject to continued detention as an alien whose release presents a significant threat to the national security or a significant risk of terrorism. This notice advises you of the procedures for deciding whether you will be subject to continued detention.

The "Notice of Intent and Factual Basis to Continue Detention" provides you with a description of the factual basis for your continued detention. You will have an opportunity to examine the evidence against you, with the exception of any classified material, and present information on your own behalf. 8 C.F.R. § 241.14(d)(2). You will be interviewed by an immigration officer who will take your sworn statement. During the interview, you may be represented by counsel or other representative, at no expense to the government, and ICE will provide a language interpreter if such assistance is determined to be appropriate. 8 C.F.R. § 241.14(d)(3).

ICE will create a written record of proceedings, and the ICE Director will make a written recommendation to the Secretary for certification, if appropriate. The ICE Director is required to consider all relevant information, including, but not limited to: (i) the recommendation of appropriate ICE enforcement officials and of the Federal Bureau of Investigation (FBI) or other federal law enforcement or national security agencies; (ii) any statements and information you submit; (iii) the extent to which your previous conduct poses a danger to the national security and any prior convictions indicating a likelihood that release would present a significant threat to the national security or a significant risk of terrorism; and (iv) other special circumstances of the case. 8 C.F.R. § 241.14(d)(4), (5).

After notification that ICE intends to recommend that the Secretary of Homeland Security (Secretary) continue detention under 8 C.F.R. § 241.14(d), you may submit a written statement and additional information for consideration. Please submit any written statement or additional information within 30 days of receipt of the Notice of Intent and Factual Basis to Continue Detention.

The Secretary's certification is based on the record developed by ICE and the recommendations of the ICE and FBI Directors. Before making a certification for continued detention, the Secretary may order further procedures or review to ensure a complete record, consistent with the obligations to protect national security and classified information and to comply with the requirements of due process. 8 C.F.R. § 241.14(d)(6). The detention decision is subject to semi-annual review. Although the initial certification must be made by the Secretary, the Deputy Secretary may make re-certifications. 8 C.F.R. § 241.14(d)(7).

U.S. Department of Homeland Security
500 12th Street, SW
Mailstop 5900
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

Notice of Rights under 8 C.F.R. § 241.14(d)

You have the following rights prior to U.S. Immigration and Customs Enforcement (ICE) making a final recommendation to the Secretary of Homeland Security to continue your detention under 8 C.F.R. § 241.14(d):

- (1) You will be provided with written notice of ICE's intention to continue detention under 8 C.F.R. § 241.14(d) and a description of the factual basis for your continued detention.
- (2) You will have a reasonable opportunity to examine evidence against you and to present information, including a written statement, on your own behalf. ICE requests that any information or statement be submitted for the ICE Director's consideration within 30 days of receipt of the Notice of Intent and Factual Basis to Continue Detention. ICE will consider written requests for an extension of the response period.
- (3) You will be interviewed by an immigration officer, and a sworn question-and-answer statement will be taken. During your interview with an immigration officer, ICE will provide an interpreter, if necessary. You also have the right to be accompanied by counsel or another representative on your behalf in accordance with 8 C.F.R. part 292, at no expense to the government.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM HASSOUN,

Petitioner,

Case # 18-CV-586-FPG

v.

DECISION AND ORDER

MR. JEFF SESSIONS, Attorney General of
the United States, et al.,

Respondents.

INTRODUCTION

Petitioner Adham Hassoun, a civil immigration detainee detained at the Buffalo Federal Detention Facility, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 3. He claims that he has been in U.S. Immigration and Customs Enforcement (“ICE”) custody beyond the statutory removal period and that his detention violates his constitutional rights. *See id.* The parties have fully briefed the issues raised in the petition. In addition, the New York Civil Liberties Union Foundation (“NYCLU”) has filed a brief as *amicus curiae* to alert the Court to certain important legal questions. Having reviewed the record and the briefing, the Court finds that a hearing is unnecessary to resolve the petition. For the reasons that follow, the petition is GRANTED.

BACKGROUND

The following facts are drawn from the record. Petitioner is a Palestinian who, while born in Lebanon, is not a citizen of Lebanon. Petitioner was first admitted to the United States in 1989 as a nonimmigrant “visitor for pleasure,” which was changed in 1990 to that of a nonimmigrant student. ECF No. 13-1 at 2. In 2002, after Petitioner failed to comply with the conditions of his

student visa, immigration authorities detained him and instituted removal proceedings. *See* 8 U.S.C. § 1227(a)(1)(C)(i) (stating that an alien who fails to comply with the conditions of nonimmigrant status is deportable). Petitioner's order of removal became administratively final in 2003.

In early 2004, before Petitioner could be removed, he was taken into federal custody on criminal charges. Ultimately, Petitioner was convicted on three charges: (1) conspiracy to murder, kidnap and maim persons in a foreign country (18 U.S.C. § 956(a)(1)); (2) conspiracy to provide material support for terrorism (18 U.S.C. § 371); and (3) providing material support to terrorists (18 U.S.C. § 2339A(a)). *See* ECF No. 13-1 at 3. Petitioner completed his term of imprisonment in October 2017, at which time he was again detained by immigration authorities on his original order of removal. ICE began "engag[ing] with multiple foreign governments concerning [Petitioner's] removal." *Id.*

Petitioner has remained in custody at the Buffalo Federal Detention Facility since October 2017. At present, Respondents do not justify Petitioner's continued detention on the basis of his criminal convictions or his threat to the community. *See* ECF No. 14 at 6-7. Instead, Petitioner is being detained because he failed to comply with the conditions of his nonimmigrant status and because, in Respondents' view, his removal is likely to occur in the reasonably foreseeable future. *See id.*; ECF No. 29-13; *see also* 8 U.S.C. § 1231(a)(6) (permitting detention of aliens who are removable for failure to comply with conditions of nonimmigrant status).

In May 2018, Petitioner filed the present petition, challenging his continued detention and arguing that it was unlikely that he would be removed in the reasonably foreseeable future. *See* ECF No. 1.

Around the time the petition was filed, immigration authorities were seeking to remove Petitioner to the territory of the West Bank. That avenue appeared to be promising. In June 2018, the Palestinian Liberation Organization (“PLO”)—through its representatives located in Washington, D.C.—notified ICE that it would be willing to issue travel documents to Petitioner to enter the West Bank. However, removal to the West Bank requires transit through, and therefore authorization from, Jordan and Israel. *See* ECF No. 45-1 at 2. Alternatively, the PLO indicated that it would issue Petitioner a passport if another country agreed to accept him.

By late July 2018, immigration authorities had submitted a request to Israel for authorization. In addition, travel-document requests had been submitted to “the Governments of Egypt, Iraq, Israel, Lebanon, the Palestinian Territories, Somalia, Sweden, and the United Arab Emirates.” ECF No. 13-1 at 3. Saudi Arabia was also approached. ECF No. 45-1 at 2. In a declaration dated July 27, 2018, Michael Bernacke, Unit Chief for Removal and International Operations at ICE, opined that Petitioner’s removal was “significantly likely in the reasonably foreseeable future.” ECF No. 13-1 at 4.

Obstacles have since arisen that complicate Petitioner’s removal to the West Bank. In September 2018, the PLO’s Washington, D.C. office was closed, potentially casting some doubt as to whether ICE could still obtain travel documents. Nevertheless, ICE indicates that it has “continued to engage directly with Palestinian Authority officials in the West Bank for travel documents in numerous cases” and that there is “no indication that the Palestinian Authority considers the decision of the [Washington] PLO delegation concerning [Petitioner’s] travel documents to be invalid.” ECF No. 45-1 at 2. Furthermore, in November 2018, Jordan unilaterally terminated the “Memorandum of Coordination” under which it arranged Palestinian deportations with ICE. A new Memorandum of Coordination is being negotiated with Jordan, but Respondents

provide no timeline for when those negotiations would be complete, let alone for when Petitioner could obtain travel authorization. The request for authorization from Israel remains pending, and Respondents offer no timeline or update as to the status of that request.

Furthermore, Sweden, the United Arab Emirates, Iraq, and Lebanon have declined ICE's travel-document requests. ECF No. 15-1 at 2; ECF No. 45 at 3. The requests to the other governments are apparently pending without any new developments.

To remove Petitioner, ICE has also sought the assistance of an interagency working group consisting of various government entities, including the Department of State. In Fall 2018, the State Department identified several countries that might accept Petitioner. In particular, there is one unspecified country that the State Department believes is "most likely to consider seriously a U.S. request" to accept Petitioner. ECF No. 45-2 at 4. There are delicate diplomatic considerations in play, however. These considerations are set forth in the declaration of Hillary Johnson, a deputy coordinator with the Department of State. *See id.* at 2.

For one thing, to maximize the likelihood of success, "the U.S. government would need to make the request of that one country alone and not concurrently with requests to other nations. This is because the country would need to engage in a comprehensive decision-making process in order to accept [Petitioner]." *Id.* at 4. In addition, the country would need to remain anonymous during this process. *Id.* at 5. Johnson avers that on November 28, 2018, the State Department issued an official "Démarche" cable to the U.S. Embassy in the unspecified country, "instructing the Embassy to contact the domestic government at the highest appropriate level."¹ *Id.* at 4. On December 6, 2018, "[t]he U.S. Ambassador personally presented the request that the country accept [Petitioner's] removal to a high-ranking official in the Ministry of Foreign Affairs." *Id.* at

¹ "A Démarche is an official government-to-government request made in diplomatic channels, and is reserved for the most serious or formal communications between states." ECF No. 45-2 at 4-5.

5. That official “agreed to give the request serious consideration, and to discuss the U.S. request with others across his government.” *Id.* Respondents offer no particular timeline in which removal could be effectuated to the unspecified country, but Johnson indicates that the State Department “hope[s] to have some response to [the] request by mid-January.” *Id.* There are two other countries to which the State Department may send requests if the “present, positive, assessment of the likelihood of removal to the [unspecified] country . . . change[s].” *Id.*

DISCUSSION

Petitioner requests release from custody on the ground that there is no significant likelihood that he will be removed in the reasonably foreseeable future. He raises three claims: (1) that his continued detention violates 8 U.S.C. § 1231(a)(6); (2) that his continued detention violates his substantive due process rights; and (3) that ICE’s administrative review of his custody status is so deficient as to violate his procedural due process rights. The Court first addresses Petitioner’s statutory claim.

I. Petitioner’s First Claim – Violation of 8 U.S.C. § 1231(a)(6)

a. Legal Standard

The Court begins by providing some background on the statutory scheme governing the detention of aliens who have been ordered removed. Under 8 U.S.C. § 1231(a)(1)(A), “aliens ordered removed shall be removed by the Attorney General within [a] 90-day ‘removal period.’” *Turkmen v. Ashcroft*, 589 F.3d 542, 547 (2d Cir. 2009). “The government is required to detain an alien ordered removed until removal is effected, at least for the removal period.” *Id.* (citing 8 U.S.C. § 1231(a)(2)). If removal is not effectuated within the removal period, “the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3).

In addition, there is a “special statute [that] authorizes further detention if the Government fails to remove the alien” during the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001). Specifically, 8 U.S.C. § 1231(a)(6) gives the government the discretion to detain certain categories of aliens:

An alien ordered removed [1] who is inadmissible . . . [2] [or] removable [as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy] or [3] who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period and, if released, shall be subject to [certain] terms of supervision

Id. (quoting 8 U.S.C. § 1231(a)(6)). By its plain language, the statute does not appear to impose any limitation on the length of an alien’s detention. But in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court interpreted § 1231(a)(6) narrowly to avoid the possible constitutional problems with indefinite detention. It read the statute to impose certain implicit limitations on the government’s authority to detain aliens falling into those categories. The court held that an alien could be detained “until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* at 701. This limitation is linked to the statute’s “basic purpose,” which is to “assur[e] the alien’s presence at the moment of removal.” *Id.* at 699.

The *Zadvydas* court also provided a framework under which habeas courts are to review claims challenging continued detention under § 1231(a)(6). The ultimate question for the habeas court is “whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* The presumptively reasonable period of detention is six months. *Id.* at 701. Once that period has passed, an alien bringing a claim bears the initial burden of providing “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the alien makes such a showing, “the [g]overnment must respond with evidence sufficient to rebut that showing.” *Id.*

In analyzing the likelihood of removal, courts consider a variety of factors, including the existence of a repatriation agreement with the target country, the target country's prior record of accepting removed aliens, and specific assurances from the target country regarding its willingness to accept an alien. *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436-37 (S.D.N.Y. 2017); *see also Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003). Due deference is owed to the government's views on these matters as well as its estimation of the likelihood of removal. *See Zadvydas*, 533 U.S. at 700 (stating that review "must take appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive . . . efforts to enforce this complex statute, and the Nation's need to 'speak with one voice' in immigration matters").

What constitutes the "reasonably foreseeable future" will depend on the length of detention. That is, "as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. In effect, the parties' respective burdens shift as the length of detention increases. *See, e.g., Alexander v. Attorney General U.S.*, 495 F. App'x 274, 276-77 (3d Cir. 2012) ("*Zadvydas* . . . suggests that an inversely proportional relationship is at play: the longer an alien is detained, the less he must put forward to obtain relief."); *D'Alessandro v. Mukasey*, 628 F. Supp. 2d 368, 406 (W.D.N.Y. 2009); *Lawrikow v. Kollus*, No. CV-08-1403, 2009 WL 2905549, at *12 (D. Ariz. July 27, 2009); *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, at *4 (N.D. Ill. Apr. 28, 2003). Thus, as time passes, the mere existence of possible avenues for removal becomes insufficient to justify further detention; some evidence of progress is required. *See Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010); *Lawrikow*, 2009 WL 2905549, at *13; *Hajbeh v. Loiselle*, 490 F. Supp. 2d 689, 693 (E.D. Va. 2007); *Shefqet*, 2003 WL 1964290, at *5. *But see Gathiru v. Banieke*,

No. 15-CV-4247, 2016 WL 8671833, at *6 (D. Minn. Sept. 9, 2016) (noting that the mere “lack of visible progress” or the government’s inability to provide a concrete timeframe for removal does not necessarily establish that removal is unlikely in the reasonably foreseeable future).

b. Analysis

Petitioner has surmounted the first of *Zadvydas*’s hurdles, as it is undisputed that the six-month presumptively reasonable period has passed. *See Zadvydas*, 533 U.S. at 701. Indeed, Petitioner has been detained at the Buffalo Federal Detention Facility since October 2017—more than fourteen months.

Having established that his detention has extended beyond the presumptively reasonable period, Petitioner bears the initial burden to provide “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The Court concludes that he has met this burden.² Petitioner has shown that the countries with which he has any affiliation will not accept him. Lebanon, his place of birth, will not accept him. ECF No. 29-20 at 2. Neither Sweden nor the United Arab Emirates, where he has family, will accept him. *See* ECF No. 29-1 at 2. While the PLO is willing to admit Petitioner to the West Bank, his authorization from Israel has been pending since at least July 2018 without update, and any authorization from Jordan is now stalled as a new Memorandum of Coordination is negotiated. Furthermore, Petitioner has submitted a declaration from Ardi Imseis, an assistant professor of law at Queen’s University, who has significant experience in the area of Palestinian refugees. *See* ECF No. 29-3 at 1. Imseis opines that it is “extremely unlikely” that Israel will allow Petitioner to enter

² The NYCLU argues that the Court should take this opportunity to clarify *Zadvydas*’s “good reason” standard. The NYCLU contends that “good reason” should be considered a “relatively low threshold,” and it disapproves of decisions in this district that have held aliens to a higher burden. ECF No. 37 at 7-12. The Court does not consider it necessary to do so. Petitioner has provided sufficient evidence to show that his removal is not significantly likely in the reasonably foreseeable future. Whether the “good reason” standard demands a low or high evidentiary showing, Petitioner has satisfied it in this case.

the West Bank. *Id.* at 6. Furthermore, it is undisputed that Petitioner has actively assisted the government in its efforts to obtain his removal. *See* ECF No. 14 at 9-10. The evidence Petitioner presented goes far beyond the sorts of conclusory statements and general assertions that courts have found insufficient to satisfy the initial burden. *See, e.g., Beckford v. Lynch*, 168 F. Supp. 3d 533, 539-40 (W.D.N.Y. 2016) (collecting cases). By any reasonable measure, Petitioner has provided “good reason” to believe that he will not be removed in the reasonably foreseeable future.

Consequently, the burden shifts to Respondents to rebut Petitioner’s showing. *Zadvydas*, 533 U.S. at 701. Respondents have provided a variety of evidence in support of their position. Even so, after reviewing Respondents’ evidence and the record as a whole, the Court concludes that there is no significant likelihood of removal in the reasonably foreseeable future.

It is important to note at the outset that this is not a case where the government has been dilatory in its attempts to effectuate removal. To the contrary, the record establishes that the government has undertaken substantial, good faith efforts to remove Petitioner. Immigration authorities have contacted a number of countries, engaged multiple government agencies, and undertaken high-level diplomatic efforts. But, under *Zadvydas*, the reasonableness of Petitioner’s detention does not turn on the degree of the government’s good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. *See id.* at 702. Rather, the reasonableness of Petitioner’s detention turns on whether and to what extent the government’s efforts are likely to bear fruit. Diligent efforts alone will not support continued detention.

It is likewise important to note that, in this case, the length of Petitioner’s detention is a critical factor in the calculus. As discussed above, the government’s burden becomes more onerous the longer an alien is detained, because it must show that removal will be effectuated sooner in the future. *See, e.g., D’Alessandro*, 628 F. Supp. 2d at 406 (“Given the [16-month]

detention . . . the reasonably foreseeable future has nearly shrunk to the point of being the present time.”); *Shefqet*, 2003 WL 1964290, at *4 (“The period of Petitioner’s post-final-order detention has at this time exceeded seventeen months and so the ‘reasonably foreseeable future’ must now come very quickly.”).

Respondents have not carried that burden. From what the Court can gather, there remain the following possible options: Somalia, Saudi Arabia, Egypt, Israel, the Palestinian territories, and the unspecified country.³ As to the first four countries, travel document requests have been pending since at least late July 2018—about five months—and Respondents have not elaborated on the status or likelihood of success of those requests. Respondents’ assertions are more general and vague. Bernacke states that Somalia and Saudi Arabia have shown a past “willingness to assist in third-country removal for individuals in other cases.” ECF No. 45-1 at 2. Bernacke also states that he has discussed Petitioner’s removal “with high level foreign government representatives.” ECF No. 13-1 at 3. But the record does not disclose that any of these countries—Somalia, Saudi Arabia, Egypt, or Israel—have meaningfully responded to the government’s request.⁴ *See Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (fact that travel-document request—which had been pending for eight months without update—had not been denied was insufficient to show significant likelihood of removal in the reasonably foreseeable future); *see also Nma*, 286 F. Supp. 2d at 475. Nor does Bernacke offer any specific opinion as to whether removal is likely to any of

³ There are also two other unspecified countries to which the State Department may reach out, but it has yet to do so. *See* ECF No. 45-2 at 5.

⁴ Some courts have held that “mere delay by the foreign government in issuing travel documents, despite reasonable efforts by United States authorities to secure them,” does not demonstrate “that there is no significant likelihood of removal in the reasonably foreseeable future.” *Boachie-Danquah v. U.S. Attorney General*, No. 17-cv-641, 2018 WL 868769, at *3 (S.D. Ohio Feb. 14, 2018) (collecting cases). The present case is distinguishable. The record does not indicate that the delay in Petitioner’s case is the result of bureaucratic inertia from an otherwise amenable country.

these countries or what the timeframe might be. Particularly given that Petitioner does not have any connection to these countries, removal to one of them constitutes, at most, an “unsubstantiated possibility” as opposed to a concrete likelihood. *Lawrikow*, 2009 WL 2905549, at *13. Because the reasonably foreseeable future is drawing nearer, more is required from the government.

Petitioner’s possible removal to the Palestinian territories suffers from the same defect. To be sure, there is evidence that Palestinian authorities are willing to accept Petitioner. But removal to the West Bank also requires authorization from Jordan and Israel. ECF No. 45-1 at 2. Jordan has unilaterally terminated its Memorandum of Coordination with ICE, and Respondents offer no timeframe in which removals might begin again. Even assuming that a new Memorandum of Coordination will be negotiated expeditiously, Respondents present no evidence as to (1) the likelihood that the Jordanian government will authorize Petitioner’s transit to the West Bank, or (2) how long it would take the Jordanian government to provide such authorization. Respondents’ showing with respect to Israel’s authorization is similarly lacking—the only evidence is that the request “remains pending with Israeli authorities.” *Id.* The combination of diplomatic barriers to Petitioner’s removal and the absence of a meaningful response from Jordan and Israel leave the Court skeptical that there remains a significant likelihood that Petitioner will be removed to the West Bank in any timeframe that might be described as reasonably foreseeable.

The final possibility is the unspecified country to which the government has recently reached out. Respondents present some evidence that this country might be viable. A high-ranking official of that country agreed to “give the request serious consideration” and to discuss it with others in his government. ECF No. 45-2 at 5. More generally, Bernacke opines that high-level negotiation by “senior levels of ICE management and embassy staff” generally results “in positive outcomes.” ECF No. 13-1 at 3. Similarly, Johnson opines that the State Department has

successfully resolved cases similar to Petitioner's in the past through diplomatic channels. ECF No. 45-2 at 3. However, the record fails to disclose any evidence illuminating the likelihood that this country will accept Petitioner specifically or the timeframe in which removal could be effected. The Court recognizes that such information may not be presently available, given the preliminary stage of the request and the delicacy of the negotiations, but that merely reinforces the Court's view that Respondents have not shown that Petitioner will likely be removed in the reasonably foreseeable future.

As Respondents note, under *Zadvydas*, a habeas court must take into account the "greater immigration-related expertise of the Executive Branch." *Zadvydas*, 533 U.S. at 700. In this case, such deference may warrant crediting the government's view that, despite the apparent barriers and diplomatic hurdles it faces, it will ultimately "obtain the approval necessary to remove Petitioner either to the West Bank or a third country." ECF No. 45 at 8. But detention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future. *Zadvydas*, 533 U.S. at 701. At fourteen months of detention, Petitioner's removal need not necessarily be imminent, but it cannot be speculative. *See Shefqet*, 2003 WL 1964290, at *6 (concluding that, after seventeen months of detention, "Petitioner's period of post-final-order detention has been sufficiently long such that a remote, non-specific possibility does not satisfy Respondents' burden"). And while the Court understands that Petitioner's circumstances and criminal history present unique difficulties, a finding in the government's favor would at this stage be founded merely upon the extent of the government's efforts, rather than the likelihood of removal in the foreseeable future. *Zadvydas* demands more. *See Zadvydas*, 533 U.S. at 702.

Accordingly, because the Court cannot conclude that there is a significant likelihood of removal in the reasonably foreseeable future, Petitioner's continued detention is no longer authorized under § 1231(a)(6).

Two matters give the Court some pause. First, Johnson indicates that the State Department "hope[s] to have" a response from the unspecified country by mid-January. ECF No. 45-2 at 5. It is unclear whether this means that the country might definitively approve Petitioner's removal by mid-January, or simply that the country will notify the State Department that it is willing to begin a formal authorization process at that time. Regardless, in light of the ongoing negotiations and the State Department's view that the unspecified country represents one of the strongest options for Petitioner's removal, the Court intends to give the government reasonable leeway in pursuing that possibility.

Therefore, the Court will delay Petitioner's release until March 1, 2019. On or before January 28, 2019, the government may file a supplemental memorandum detailing the state of negotiations with the unspecified country. The government's memorandum shall be limited to that issue, and no further briefing by any party will be permitted without prior leave of Court. Based on the information provided by the government, the Court will determine whether to further delay Petitioner's release and stay its order.

Second, Petitioner stands convicted of serious federal offenses relating to terrorist activities. Despite this, Petitioner is not presently being detained on the basis that he presents a risk to the community, which would be an independent reason justifying his continued detention. *See* 8 U.S.C. § 1231(a)(6). To that end, the above-noted delay of Petitioner's release may serve another purpose: it will give immigration authorities an opportunity to develop reasonable conditions of supervision for Petitioner, and, if they so choose, to determine whether Petitioner

may be detained on some basis other than his noncompliance with his nonimmigrant status. The Court's order does not preclude Respondents from continuing to detain Petitioner on any other permissible basis provided under applicable statutes or regulations.⁵

II. Petitioner's Second and Third Claims – Constitutional Violations

In his second and third claims, Petitioner argues that his continued detention violates his substantive due process rights and that the manner in which ICE has conducted his custody reviews violates his procedural due process rights. However, for both claims, Petitioner requests no more than release from detention subject to reasonable conditions of supervision. *See* ECF No. 3 at 8; ECF No. 29 at 40. Because Petitioner has been afforded complete relief by virtue of his first claim, the Court finds it unnecessary to address these alternative grounds. *See Banks v. Dretke*, 540 U.S. 668, 689 n.10 (2004) (where writ of habeas corpus was granted on one basis, declining to address alternative ground because “any relief [the petitioner] could obtain on that claim would be cumulative”); *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) (noting that courts should ordinarily avoid “reaching constitutional questions in advance of the necessity of deciding them”).

III. Proper Respondents

One final matter must be addressed. Respondents contend that all of the respondents except Jeffrey Searls should be dismissed from the action. They assert that the appropriate respondent in a habeas action is the person having custody over the petitioner—here, Jeffrey Searls, the Acting Assistant Field Office Director of the ICE Buffalo Field Office.

⁵ In his reply brief, Petitioner argues that he is neither a risk to the community nor a flight risk. *See* ECF No. 29 at 37-40. The Court declines to address these questions at this juncture. Under § 1231(a)(6), immigration authorities are responsible for determining, in the first instance, whether an alien is “a risk to the community or unlikely to comply with the order of removal.” 8 U.S.C. § 1231(a)(6). Moreover, because Petitioner is not presently being held on either of those bases, any opinion by this Court would be advisory.

“The majority view in the Second Circuit requires the ‘immediate custodian,’ generally the prison warden, to be named as a respondent in ‘core’ immigration habeas proceedings—*i.e.*, those challenging present physical confinement.” *Khemlal v. Shanahan*, No. 14 Civ. 5186, 2014 WL 5020596, at *2 n.3 (S.D.N.Y. Oct. 8, 2014); *Zhen Yi Guo v. Napolitano*, No. 09 Civ. 3023, 2009 WL 2840400, at *3 (S.D.N.Y. Sept. 2, 2009) (collecting cases). Petitioner does not dispute that Searls is the only appropriate respondent under this rule. Therefore, the other respondents will be dismissed from the case, and the Court’s order will be limited to Respondent Searls. *See* Fed. R. Civ. P. 21 (“On motion or on its own, the court may at any time, on just terms, add or drop a party.”); *see also In re Grabis*, No. 13-10669, 2018 WL 1508754, at *5 (S.D.N.Y. Mar. 26, 2018) (“Relief under Rule 21 dismissing a party from an action is especially appropriate when there is clearly no right or basis of relief from a party.” (internal quotation marks omitted)).

CONCLUSION

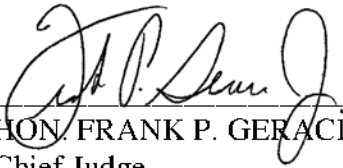
For the reasons discussed above, the petition is GRANTED as follows:

1. Petitioner is entitled to relief insofar as the government has exceeded its authority to detain Petitioner under 8 U.S.C. §§ 1227(a)(1)(C) & 1231(a)(6);
2. Petitioner shall be released from Respondent Searls’s custody on March 1, 2019, unless the Court orders otherwise;
3. Respondent Searls may file a supplemental memorandum on the status of negotiations with the unspecified country by January 28, 2019, after which the Court will determine whether to delay Petitioner’s release;
4. Respondent Searls may, in his discretion, set reasonable conditions of supervision for Petitioner as part of his release;
5. The Court’s order does not preclude Respondent Searls from continuing to detain Petitioner on any other permissible basis under applicable statutes and regulations;
6. Respondent Searls shall notify the Court if he determines that Petitioner will be detained on some other permissible basis.

7. The Clerk of Court shall dismiss all other respondents except Jeffrey Searls from this action.

IT IS SO ORDERED.

Dated: January 2, 2019
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court